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MONTANA LEGISLATIVE HISTORY

Chapter 212 19 99

Bill H _____ S 103 Original bill & history ~~X~~ X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/2 X C

3/10 X C

_____ C

_____ C

Date Out _____ C

S. Committee on PUBLIC HEALTH, WELFARE & SAFETY

Hearing Date(s) 1/15 X C

SUBCOMMITTEE HRG. 1/22 X C

SUBCOMMITTEE HRG. 2/1 X C

EXEC ACTION 2/3 X C

Did this bill originate in an interim committee? ____ Yes X No

Committee _____ Report _____

SENATE BILL NO. 103

INTRODUCED BY FRANKLIN E

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; CLARIFYING THE DEFINITION OF INSURANCE FUNCTION AND MEDICAL RECORD INFORMATION; REQUIRING CONSENT BEFORE AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION COLLECTS PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL; RESTRICTING UNAUTHORIZED DISCLOSURE OF PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; PROVIDING INDIVIDUALS ACCESS TO RECORDS OF UNAUTHORIZED DISCLOSURE OF THEIR PERSONAL OR PRIVILEGED INFORMATION BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; AND AMENDING SECTIONS 33-19-104, 33-19-202, 33-19-204, AND 33-19-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-19-104, MCA, is amended to read:

"**33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, grievance procedures, and internal administration of compliance and policyholder service functions.

~~(10)~~(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

~~(11)~~(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

~~(12)~~(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution

or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

~~(13)~~(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

~~(14)~~(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

~~(15)~~(16) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

~~(16)~~(17) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

~~(17)~~(18) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained, directly or indirectly, from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

~~(18)~~(19) "Person" means a natural person, corporation, association, partnership, or other legal

entity.

~~(19)~~(20) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

~~(20)~~(21) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

~~(21)~~(22) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

~~(22)~~(23) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

~~(23)~~(24) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

~~(24)~~(25) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

~~(25)~~(26) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 2. Section 33-19-202, MCA, is amended to read:

"**33-19-202. Notice of insurance information practices.** (1) An insurance institution or insurance producer shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice ~~shall~~ must be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice ~~shall~~ must be provided no later than the policy renewal date, except that ~~no~~ notice is not required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice ~~shall~~ must be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that ~~no~~ notice is not required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect ~~such~~ the information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), ~~(13),~~ and ~~(15)~~ (14) of 33-19-306 and the circumstances under which ~~such~~ the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) ~~such~~ the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf."

Section 3. Section 33-19-204, MCA, is amended to read:

"**33-19-204. Content, use, and disclosure of authorization forms.** Notwithstanding any other provision of law of this state, an insurance institution, insurance producer, or insurance-support organization may not ~~utilize as its disclosure authorization form~~ collect personal or privileged information about an individual in connection with insurance transactions except in conformance with a form or statement that authorizes the disclosure of personal or privileged information about ~~an~~ the individual to the insurance institution, insurance producer, or insurance-support organization ~~unless~~ and the form or statement:

(1) is written in plain language;

(2) is dated and signed by the individual or a person authorized to act on behalf of the individual;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance producer and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time ~~such~~ that the authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form and the record of any subsequent disclosures of personal or privileged information that must include:

(a) the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information during the preceding 3 years;

(b) the date of the receipt or examination; and

(c) to the extent practicable, a description of the information disclosed."

Section 4. Section 33-19-306, MCA, is amended to read:

"**33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; ~~and~~

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

~~(iii)~~(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, provided ~~such~~ that the disclosure is limited to that which is reasonably necessary:

(a) to enable ~~such~~ the person to perform ~~a business, professional, or~~ an insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and ~~such~~ the person agrees not to further disclose the information ~~further~~ without the individual's separate, written authorization ~~unless the further disclosure:~~; or

~~(i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization; or~~

~~(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance-support organization; or~~

(b) to enable ~~such~~ the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, insurance producer, insurance-support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, insurance producer, or insurance-support organization to perform its insurance function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization.

(7) Disclosure may be made to a law enforcement or other government authority that agrees not to further disclose the information without the individual's separate, written authorization:

(a) to protect the interests of the insurance institution, insurance producer, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, insurance producer, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoe

(10) Disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies, provided that:

(a) no individual ~~may be~~ is identified in any actuarial or research report;

(b) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(c) the actuarial or research organization agrees not to further disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization~~ without the individual's separate, written authorization.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance

institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only ~~such~~ information is disclosed ~~as~~ that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization~~ without the individual's separate, written authorization.

~~(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:~~

~~(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;~~

~~(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and~~

~~(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.~~

~~(13)~~(12) Disclosure that is limited to that which is reasonably necessary may be made to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer ~~or the marketing of an insurance product or service~~ if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

~~(14)~~(13) ~~Disclosure~~ Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

~~(15)~~(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization.

~~(16)~~(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical

care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

~~(17)~~(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority that has agreed not to further disclose the information without the individual's separate, written authorization for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

~~(18)~~(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(18) The commissioner may, after notice and hearing, adopt rules to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsection (2) but may define:

(a) the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information; and

(b) the recordkeeping requirements applicable to an insurance institution, insurance producer, or insurance-support organization regarding unauthorized disclosures of personal or privileged information pursuant to subsections (3) through (17)."

- END -

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

1999 **Session**

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC0367 Current Bill Text

Bill Type - Number: SB 103

Short Title: Amend insurance information and privacy protection act

Primary Sponsor: Eve Franklin

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 53

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/31/1999			
(S) Signed by Governor	03/30/1999			
(S) Transmitted to Governor	03/24/1999			
(H) Signed by Speaker	03/24/1999			
(S) Signed by President	03/23/1999			
(C) Sent to Printing	03/22/1999			
(S) Returned from Enrolling	03/22/1999			
(S) Sent to Enrolling	03/19/1999			
(S) 3rd Reading Passed as Amended by House	03/19/1999	43	1	
(S) Scheduled for 3rd Reading	03/19/1999			
(S) 2nd Reading House Amendments Concurred	03/18/1999	48	0	
(S) Scheduled for 2nd Reading	03/18/1999			
(S) Scheduled for 2nd Reading	03/17/1999			
(H) Returned to Senate with Amendments	03/15/1999			
(H) 3rd Reading Concurred	03/15/1999	92	7	
(H) Scheduled for 3rd Reading	03/15/1999			
(H) 2nd Reading Concurred	03/13/1999	90	7	
(H) Scheduled for 2nd Reading	03/13/1999			

(H) Committee Report--Bill Concurred as Amended	03/11/1999			(H) Business and Labor
(C) Sent to Printing	03/11/1999			
(H) Committee Executive Action--Bill Concurred as Amended	03/11/1999	18	0	(H) Business and Labor
(H) Hearing	03/02/1999			(H) Business and Labor
(H) Referred to Committee	02/16/1999			(H) Business and Labor
(H) First Reading	02/16/1999			
(S) Transmitted to House	02/09/1999			
(S) 3rd Reading Passed	02/09/1999	49	0	
(S) Scheduled for 3rd Reading	02/09/1999			
(S) 2nd Reading Passed	02/08/1999	48	0	
(S) Scheduled for 2nd Reading	02/08/1999			
(S) Committee Report--Bill Passed as Amended	02/05/1999			(S) Public Health, Welfare and Safety
(S) Committee Executive Action--Bill Passed as Amended	02/03/1999	8	1	(S) Public Health, Welfare and Safety
(S) Discussed in Committee	02/01/1999			(S) Public Health, Welfare and Safety
(S) Subcommittee Meeting (See Subcommittee Minutes)	02/01/1999			(S) Public Health, Welfare and Safety
(S) Discussed in Committee	01/22/1999			(S) Public Health, Welfare and Safety
(S) Subcommittee Meeting (See Subcommittee Minutes)	01/22/1999			(S) Public Health, Welfare and Safety
(S) Hearing	01/15/1999			(S) Public Health, Welfare and Safety
(S) Hearing Canceled	01/07/1999			(S) Business and Industry
(S) Rereferred to Committee	01/07/1999			(S) Public Health, Welfare and Safety
(S) Referred to Committee	01/04/1999			(S) Business and Industry
(S) First Reading	01/04/1999			
(C) Introduced Bill Text Available Electronically	12/22/1998			
(S) Introduced	12/22/1998			
(C) Pre-Introduction Letter Sent	11/30/1998			
(C) Draft in Assembly/Executive Director Review	11/23/1998			
(C) Draft in Final Drafter Review	11/23/1998			
(C) Bill Draft Text Available Electronically	11/23/1998			
(C) Draft in Input/Proofing	11/20/1998			

(C) Draft To Drafter/Edit Review (SAM)	11/20/1998			
(C) Draft in Edit	11/20/1998			
(C) Draft in Legal Review	11/20/1998			
(C) Draft Back for Requester Changes	11/20/1998			
(C) Draft to Requester for Review	11/16/1998			
(C) Draft Request Received	10/22/1998			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Legislative Council		
Drafter	Lane	Valencia	
By Request Of	State Auditor		
Primary Sponsor	Franklin	Eve	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Insurance		Simple	INS
Health Care Services (see also: Health)		Simple	HLTC
Privacy		Simple	PRIV

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Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: Y
Session Law Ch. Number: 212
DEADLINE
Category: General Bills
Transmittal Date: 02/24/1999

Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JAN-00	

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MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on January 15, 1999 at 3:00 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 99, SB ~~101~~ 103, 1/9/1999
Executive Action:

HEARING ON SB 99

Sponsor: SEN. JON TESTER, SD 45, Big Sandy

Proponents: Mark O'Keefe, State Auditor, Commissioner of Insurance

SEN. JON TESTER said he would like to thank the Committee for a very good hearing. He'd also like to thank all those who testified, particular **Mrs. Linda Wolfe.** When they run as Senators for office they have visions of doing something that is very good for the state of Montana. He would like to go back and quote what **SEN. HARP** said on opening day, "and that is to leave this place in a better way, than when they found it." He thinks this bill would fit his criteria and he would urge their do pass on this bill, **SB 99.**

{Tape : 1; Side : B; Approx. Time Counter : 0 - 20}

HEARING ON SB 101 103

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Mark O'Keefe, State Auditor, Commissioner of Insurance and Securities**
Jim Smith, Representing Montana State Pharmaceutical Association
Andrea Merrill, Executive Director Mental Health Association of MT
Verner Bertlesen, Montana Senior Citizens' Association
Mona Jamison, Attorney, Representing Montana Chapter of the Physical Therapy Association/ Shodair Childrens' Hospital
Rebecca Moog, Montana Womens' Lobby
Gloria Hermanson, Montana Psychological Association
Kip Smith, Associate Director, Montana Primary Care Association
Mary McCue, Association of Licensed Professional Counselors
Jerry Loendorf, Montana Medical Association
Jim Ahrens, Montana Hospital Association
Jacqueline Lenmark, American Insurance Association
Susan Witte, Blue Cross, and Blue Shield
Don Allen, Representing Montana Medical Benefit Plan
Sami Butler, Montana Nurses' Association

Opponents: **Greg Van Horssen, Lobbyist State Farm Insurance Company**

Jon Metropoulos, Lobbyist, Farmers Insurance Group

Mike Baker, Lobbyist, American Council of Life Insurance

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD, 21, Cascade County, the home of Charlie Russell said she has in front of the Committee today, the responsibility of presenting to them **SB 103.** This bill comes at the request of the **Auditor's Office** and it addresses, what she thinks is an increasing challenging issue for this Committee and society in general and that is striking the balance between the individual's right to privacy, which is one that we hold quite dear and balancing that with societies need to perform certain legitimate functions of commerce and health care.

The Committee has a packet of information that was prepared by the Auditor's Office. It is the same packet of information that was made available to her to prepare for this bill and it will give the Committee some of the same background. Some of the literature that she was able to read included some pretty compelling material. She is just going to read one paragraph to the Committee. "According to one estimate a typical patients hospital records is seen by an average of 77 people." And this becomes an increasingly challenging issue as information flow itself becomes itself a very easy mechanism within our society. Its no longer a question of people operating with green eye shades and pencils, take down a few things and pass them out, but the repetitively with which information is able to be made available, makes this even a more pressing issue.

Senate Bill 103 restricts what is known as secondary disclosures by insurance insurers, private personally identifiable information to third parties. They will see in their packet a chart there showing all the people who have access to your private health care information.

EXHIBIT(phs11a04)EXHIBIT(phs11a05)

If they look at the blue arrows this bill does not affect the blue arrows. In other words with authorization as per usual, we can give our permission to have our insurer see our records. Physicians do it all the time, health care folks do it all the

time. You go to a physician your information becomes available to your provider and then to your insurer. It also doesn't effect the red arrows. Those are what is considered legitimate secondary reasons that any of these individuals, consumers reporting agencies, businesses, other insurance, claim handlers, law enforcement, all those may have some very legitimate reasons to see your information. What it does do is create a sort of gate. That secondary receiver of information can't pass that along without your specific written information to marketers, brokers, and those people who might sell your very private personal information for profit.

It might be for marketing purposes. It might be for a whole host of commercial purposes that you might not really feel you want out in the general public. What remains protected is all legitimate functions that an individual with those agencies might need to have your information. It does require that they maintain a record for three years of that disclosure, which health providers do. Any insurer who gives your information with out your permission, does have to maintain a record. So it is a right to know issue for you should you ever have some reason to question, you at least will know, and then they have to purge their records.

She would like to refer them to one more incident, one more snippet of information, 35% of Fortune 500 companies check medical records before they hire or promote. There is a great deal of information out there. She is not a particularly paranoid individual. She always says she doesn't really care what people say about her as long as she is not there because she doesn't know. So she is not particularly paranoid, but she thinks when you are talking about things that are close to your heart, medications that you are on, whether or not you are incontinent, whether you have a psychiatric history, whether you ever received medication for depression, whether you have sexual dysfunction, whether you have diabetes. There are certain people who may need to know that, but there is a lot of people who don't need to know that, or purchase that information without your permission. There are others who will be able to speak to the mechanics of the bill and she reserves the right to close.

Proponents' Testimony:

Mark O'Keefe, State Auditor, and Insurance and Securities Commissioner said he was here to speak today on a topic that he thinks they will agree warrants some serious attention. He is talking about one of the dangers of the technical revolution that we are in. He is talking about the lack of privacy, specifically as it pertains to medical information. He spent a lot time as the Insurance Commissioner watching other States. He is a member

of the National Association of Insurance Commissioners' and quite often, his philosophy is that if you see a problem that is presently occurring in California, Texas, Illinois, or New York, that's not occurring in Montana, you'd better fix it now, because it will be here in 5 years. And quite often we're able to put fixes into the law and into the rules in this State that avoid problems, because they are coming down the line a few years later.

That's not necessarily the case with this particular bill before the Committee today. The privacy of our most cherished and personal information, our medical records, is at risk today in Montana. Medical records are in fact family secrets. We all have deep dark family medical secrets that we might be willing to talk to our spouses or our physicians about, but we don't want that information sold or put on the INTERNET. Some people may tell you today that these problems don't exist in Montana, private and medical records are not at risk in Montana. He will tell you that is not true and he believes that both they and himself know better than that.

In their packets that they handed out, they will find recent articles from both the Great Falls Tribune, and the Washington Post about insurance and managed care companies treating medical information as a marketing commodity, to be sold traded, or otherwise disclosed in ways that Montana patients, and doctors never intended.

EXHIBIT(phs11a06)

They will also find in their packets a letter from **Doctor Rausch** of Shelby, Montana, complaining about the same company and the same misuse of private medical records that the Washington Post describes.

EXHIBIT(phs11a07)

Doctor Rausch prescribed medication for his patient in Shelby and then suddenly out of the blue, both he and the patient received targeted mailings from an affiliate of the Eli-Lilly Pharmaceutical Company, suggesting that they substitute over the counter Dimetapp for the medication **Dr. Rausch** had prescribed. What angered **Dr. Rausch** the most was the dangerous self-serving suggestion by a pharmaceutical manufacture. What angered him the most as the Insurance Commissioner, was the way an insurance company had transferred a patient's private prescription records to a direct-mail marketer, pitching a competitive brand of medicine. When my office protested, the company agreed to quit using private records for such mailings into Montana, but the company steadfastly insisted that it was legal under Montana law,

and unfortunately, although he never admitted it to the company, he agreed with them.

Here's another example, a Missoula woman recently complained to his office, after applying for health insurance for herself and her son. As a part of her application, she had to disclose extreme sensitive medical information about both of them and she presumed that the company would protect her privacy. IT DIDN'T.

In a FAX to her place of work, while she was out of the office on vacation, the company announced in painful detail, that it was declining coverage because of her medical condition and that of her son. When she returned to the office and found the FAX in plain sight of her co-workers, she was so embarrassed that she immediately threw it in the trash can and then, still trying to preserve what was left of her privacy and dignity had to retrieve it.

Again his office convinced the company to apologize, but they NEVER convinced the company, that Montana law prohibits such careless disclosures of medical information. When they talk to a physician, it's in our very best interest to tell them the truth. If they are going to prescribe either drugs or treatment for us, they need to know the true nature of our health history and our potential for illness. What happens to that information, when we give it to a physician or a health insurance company right now? It ZIPS from computer to computer, from doctor to insurance companies to hospitals where any one can see it.

SEN. FRANKLIN mentioned the Great Falls article, and that in an average patient hospital record, 77 people see that thing. Many of those eyes belong to the insurance industry and it is his job to protect their private health care information when the insurance industry gets it. Private medical records need to be collected. They need to be analyzed. But right now in Montana they are being collected and shared with fewer safe guards than are video store records.

In fact if he tried to find out what movies, **SEN. BOHLINGER** rented the last time he used his video rental card, he would be in violation of Federal laws. Video records are protected for their privacy by those laws, as is **SEN. BOHLINGER'S** credit card, his credit record, and his motor vehicle record, but not his private health records in the State of Montana. The way in which we protect the privacy of our medical records is erratic and it's dangerous. To eliminate this clear and present danger to our citizens and our health care, we asked **SEN. FRANKLIN** to bring them **SB 103.**

Twenty-five years ago in Montana, our health care privacy was protected by our family doctors. He or she kept hand written notes. They put them in the file, they locked the file, they locked the door, they went home, and your private medical records were protected. We trusted them, not only because of the Hippocratic Oath, and the fundamental ethics of medicine, but because we knew them. They took care of our entire families, generations of our families. We asked their advise about our personal problems. Today in the revolution of health care delivery systems means that instead of Marcus Welby -- we have to place our trust in an entire network of insurers and health care professionals, both public and private.

The computer revolution means that our deepest secrets no longer exist in only one place and no longer can be protected by locking the door. Freedom of information is good. It's great in government and he believes in it. As long as there are compelling interest in the release of information, it should be done. But we and they as a Committee have a challenge today. The challenge is whether they will harness the information revolution in the transfer of information to improve and not impede our health care.

He thinks **SB 103** does this. **Senate Bill 103** restricts health insurance companies except in certain circumstances from releasing personal health care information to third parties - without permission. The release is restricted only if the information is personally identifiable. Current law contains loop holes that allows such transfers of personal health care information to virtually any third party. Worse current Montana law does nothing to protect the privacy of that information once it has been disclosed by insurers to third parties. **Senate Bill 103** closes those loop holes. It also harnesses the flow of information to safe guard our privacy and it harnesses it to strengthen not strain the very fabric of our health care system the bond of trust between the doctor and his patient.

This bill allows health care information to flow safely to improve care, to cut fraud, to insure quality and to foster research. The fundamental issue before the Committee today is will our health care records in the future be used to heal us, or to reveal us?

Montanans want to know and this bill gives the Committee an opportunity to decide. He hopes they will support the bill. There are going to be some opponents to this bill. He knows that Montanans want them to support this bill. He has talked about it for the last 18 months. He is so convinced that Montanans want them to support this bill that he will tell them his plan in terms of dealing with this issue. Should the bill die, he is

having drafted a Constitutional Initiative on Medical Rights, Medical Information Privacy for Montanans to vote on. Should that not make the ballot, he has already talked to groups that are interested in having the same Constitutional Initiative placed on the ballot during the year 2000. The vast majority of Montanans he has dealt with the last 18 months have on this issue believe that this is a serious threat to their way of life and their families' existence in the modern computer age. Is it? That is up to you to decide. But he does think it is an issue that needs to be addressed and needs to be addressed today. He will be happy to answer any questions they might have.

Jim Smith, Representing Montana State Pharmaceutical Association, and **Individual Pharmacists and Retail Drug Stores in Montana,** said he started hearing from their pharmacists about a year ago, about these very issues. They are very well discussed and described in an excellent chart in that November 16th addition of the Washington Post. They are very concerned. Today's pharmacy are highly automated, computerized operations. More so that your average doctors office. They have seen this change that **Mark O'Keefe, Commissioner of Insurance** is talking about over the last 10 years or so in the pharmacy industry. It used to be pretty common. In fact it used to be that 2/3rds of the people coming into the pharmacy were first party payers. Cash at the counter if you will for their prescription medicine. Now it has just about reversed itself over the last 10 years, to where now 2/3rd of the people who show up for prescription medications give the pharmacist a card, a little plastic card, they run through a computer. The information is transmitted to an insurance company and their problems begin. What happens to that information, who would screen it, who gets it, they don't know. Their pharmacists quite often don't know, but it is a concern of the pharmacist because they hear from their patients. They retain counsel on this and sought legal advice, and bumped into the same barriers the **Insurance Commissioner** spoke of. They wrote to the **Commissioner** and asked for his intercession and assistance in this. As the Committee can tell, he is working on it. He'd be happy to discuss any particulars on pharmacy that he is able to with the Committee, but let him just say in the interest of time that patient privacy is important to their pharmacist and their places of business. They want to see this bill moved forward. It is just as important, privacy is as important to them as Montanans. We have a Constitutional right to it in this state, he wants his and he thinks everybody in this room wants their privacy protected and so do 850,000 other Montanans out there. So they please urge their consideration of this bill.

Andrea Merrill, Executive Director, Mental Health Association of Montana, read her written testimony.
EXHIBIT(phs11a08)

Verner Bertelsen, Montana Senior Citizens' Association, said they have lived long enough without the information about themselves being circulated one way or another, that they don't need any extra information about their medication or what particular situation in life they are in. They support this legislation and urge the Committee to give it their best consideration.

Mona Jamison, Representing Montana Chapter of the Physical Therapy Association and Shodair Childrens' Hospital, said actually she is also present representing herself. She is shocked and she has a feeling that very few people in this room that are not shocked, because they know that there is a confidentiality privilege between a patient and their physician. Yet once that information for purposes of reimbursement leaves those office confines, we have the stories that have been told, and she has a feeling that if they were to take a vote of the people of Montana, most people would be a shocked as she is, and she considers herself fairly informed. And as an attorney, she understands that confidentiality provision that goes between a physician and a patient. She said it was interesting in Montana's Constitution and the public's right to know and individual privacy and that right of privacy by government cannot be invaded, unless there is a compelling state interest, very compelling. The right of privacy supercedes, and that is where the presumption is, unless there is a compelling right to know. So in our Constitution, as that right of privacy relates to Montana government. A foreign agency can disclose personal information, they have got to show that there is an absolutely compelling need for the state to know that. She urges the Committees support of this bill. It makes sense and it makes Constitutional sense and it makes Montana sense.

Rebecca Moog, Representing Montana Womens' Lobby, said the information age being what it is, privacy has become a concern in all of our lives. For women privacy matters of health and medical care have always been an issue. They support this bill as an effort to help protect all Montanans' privacy. Our private medical records should not be easily view by dozens or even hundreds of strangers working in insurance companies and other health care industries, nor should they be for sale. They urge them to support **SB 103**.

Gloria Hermansen, Lobbyist, Montana Psychological Association, said she won't repeat the things that have already been said.

She thinks as **Andrea Merrill** spoke to them about the potential stigma of mental health, mental illnesses even in today's day and age, and often a generalization of mental health diagnosis. What goes on between a patient and their psychologist should remain between that individual and their psychologist. The absolutely support this bill.

Kip Smith, Associate Director of the Montana Primary Care Association, said there is very little he can add to what the other proponents have already said. Their members believe this bill is an appropriate balance between insurance companies business needs and the right of all of us to have our personal medical records remain private. They encourage a do pass on **SB 103.**

Mary McCue, Representing an Association of Licensed Professional Counselors who also support this legislation.

Jerry Loendorf, Representing the Montana Medical Association, said one point he might be able to add to what has already been said, is if an individual can't be confident that the information they relay to their health care provider, who ever it may be, that it may be disclosed publicly, the system will break down because people will not have the confidence to make the disclosures that need to be made in order for them to obtain complete and full health care. This is an additional important reason for the passage of this bill.

Jim Ahrens, President of the Montana Hospital Association, said **MHA** supports the bill and they would urge the Committee's support of the bill also.

Jacqueline T. Lenmark, Lobbyist, American Insurance Association, said the American Insurance Association is a trade association comprising some 350 property and casualty insurance companies. They have different concerns about the disclosure of medical information. They support this bill. They think it was carefully and thoughtfully drafted, and they urge them to give the bill a do pass recommendation.

Susan Witte, Representing Blue Cross and Blue Shield said she has some testimony to submit for **Tom Ebzery, Representing the Yellowstone Community Health Plans.**

EXHIBIT(phs11a09)

This law originally was an NAIC model law. She believes there is something like 6 or 8 states that have this law on the books. It was adopted by Montana in 1981. Its main purpose is to protection of privacy. Blue Cross/Blue Shield adheres very

strongly to protection of privacy. In fact it is grounds for immediate dismissal if anybody in the company discusses personal individually identifiable health care information. However, they do believe there are some amendments necessary to let this bill allow insurers to carry out their insurance functions. There is a section of the bill and the definitions on insurance function which does carry out a number of insurance functions, it is on Page 3, (10). They thank the State Auditor's Office for putting in that definition.

Their concern with the bill regards in part requiring someone to get separate written signed, dated, disclosure forms for any time any of that information may be re-disclosed. It might be hard at times to find, for instance herself, some 20 months down the line, if an insurance company might need her individual health care information for identified functions for those portions of the bill. The don't have any amendments today. They would suggest that a Subcommittee be formed of this Committee, so that they have an opportunity to submit a few further amendments. Again **Tom Ebzery**, with the Yellowstone Community Health Plan would support this bill going into a Subcommittee with amendments.

Don Allen, Representing Montana Medical Benefit Plan, in support of this bill. As mentioned by the previous speaker, he notes that **MMBP** is very strict in regard to releasing any information of a privacy nature and does not distribute it at all outside of the company, or by request of the Auditor's Office. In terms of the amendments, he has not had a chance to review them. He has discussed one or two of those. One in particular that was just mentioned, by Blue Cross/Blue Shield, they would certainly support their efforts, or their suggestion as appointing a Subcommittee to clarify those points. They want to be on the record in support of the bill.

Sami Butler, Representing the Montana Nurses' Association, said in the interest of time she won't tell them a story, but she will tell the Committee that the nurses in Montana believe that this is a good bill for their patients.

Opponents' Testimony:

Greg A. Van Horssen, Lobbyist, State Farm Insurance Company, said given the number of proponents and the distance to the door, he thought about changing his position on the bill. But State Farm has asked him to come to the hearing and raise a few concerns. He can tell the Committee that State Farm takes the re-disclosure of health care information very seriously. It is an offense in

this company that is subject to immediate termination if that type of thing occurs. So he doesn't want anybody on the Committee to think that State Farm doesn't take this seriously, not does he want anybody on the Committee to think that State Farm is vehemently opposed to every aspect of this bill.

There are perhaps some technical issues raised by Blue Cross/Blue Shield, raised by himself with **Russell Hill**, that he is confident they will be able to work out. Some of those things are for instance the prohibition of collecting personal and privileged information as that is defined in the statute. That raises a concern under some circumstances and they hope to be able to clear that up and perhaps bring some clarifying language, with the agreement of the Sponsor. Secondly they have some concerns about the number of times "reasonable necessary" is used in the bill. As everyone knows, "reasonable, reasonable necessary" all of these terms are subject to individual interpretation. There is a concern there, perhaps they will be able to flesh out in some discussions, if time permits. Finally, the main concern from their perspective is the record requirement. He is not saying the record requirement is something that should be done away with in the bill. He just wants the Committee to understand that any time that there was a new requirement placed upon any business, it raises costs. Those raised costs are passed along. He is raising that point of concern. He confident they will be able to sit down with the Sponsor, and **Mr. Hill** and others interested in amendments to this bill and come back to the Committee with something everybody can agree on.

{Tape : 3; Side : A; Approx. Time Counter : 0 - 36}

John Metropoulos, Representing Farmers Insurance Group of Companies, said he also wants to suggest what has been termed as "soft opposition" to this bill. They support the concepts. Many of their customers are Montanans, and he is a Montanan, and they understand the need and the right to privacy. But the devil is in the details and there are some details in this bill that make it, as written unacceptable. He has spoken some with **Mr. Russell Hill** and he thinks they have an agreement that they can at least meet and try to resolve the difficulties they have with the bill. For example in Section 3, on Page 8, Line 17, the new language appears to require the disclosure to the individual, the name and perhaps more of "consulting experts." An attorney hired to defend a case in litigation hired to consult with, now under the rules of civil procedure that's not required. And that may give an unfair advantage. **Mr. Russell Hill** tells him that is not the intent of the bill. He would like the opportunity to work with

him to come up with language to make sure that is not the effect of the bill.

Mark Baker, Representing, American Council of Life Insurance, said they were in opposition to the bill as it is presently written. They also would be in support of working on the definitions and clarifying the language in the bill in a Subcommittee.
{Tape : 2; Side : B; Approx. Time Counter : 0 - 5}

Questions from Committee Members and Responses:

The Committee members asked some questions of the proponents and opponents, at this point there was a problem with the Sony tape in the Lanier recording device (defective tape would not record).

Closing by Sponsor:

SEN. EVE FRANKLIN said the testimony is very interesting and gets to the heart of the situation and how our living our lives and our personal information is a very personal matter. She listed what the bill does not do with over a dozen functions. Nothing is precluded without authorization. She said the bill doesn't stop the computer age, but offers a few gates of protection concerning the computerization of all of our medical information and privacy of records. She would like to be allowed some time to discuss and work with the parties involved, with the hopes that they may be able to review and resolve the objections and amendments they mentioned, prior to having the recommended Subcommittee appointed. Some of the issues are not a hill to die on, however she didn't think that keeping records for a 3 year period of time was not a lot to ask for.

{Tape : 2; Side : B; Approx. Time Counter : 5 - 10; Comments : defective sony tape}

SENATE HEALTH & WELFARE
EXHIBIT NO. _____
DATE _____
BILL NO. _____

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE January 15, 1999
BILL NO. SB103

Senate Bill 103
Insurance Privacy Bill

* **SB 103 restricts health insurance companies from releasing personal health care information to third parties without permission. The release is restricted only if the information is personally identifiable.**
* **Current law contains loopholes which allow such transfers of personal health care information to virtually any third party. Worse, current Montana law does nothing to protect the privacy of that information once it has been disclosed by insurers to third parties.**
* [redacted]

⇒ Restrict an insurer's ability to gather primary health care information from its policyholders or their health care providers.

⇒ Prohibit the sale, transfer, or other disclosure of private, personal health care information to 3rd parties with permission from the insured.

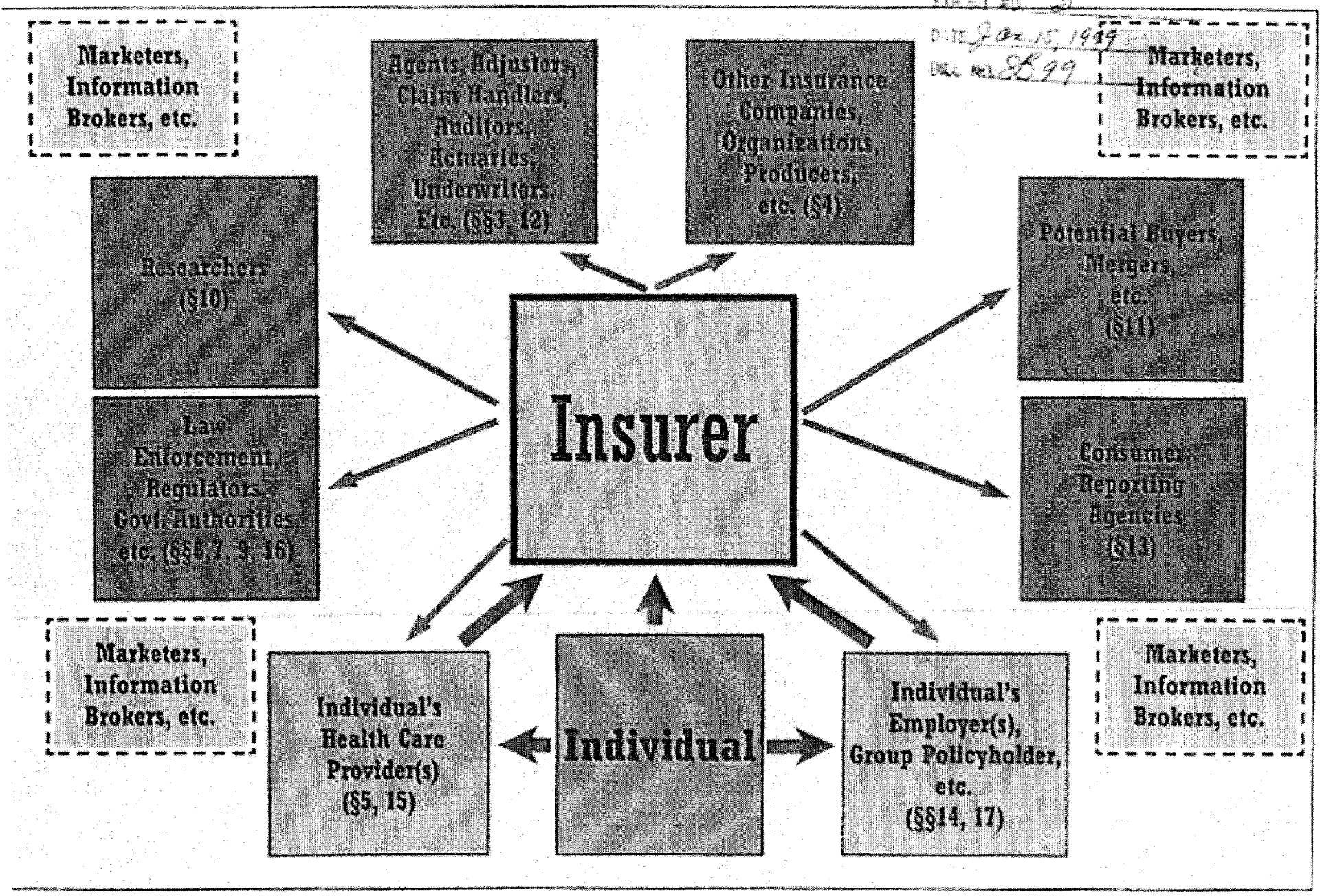
⇒ Prohibit the exchange of medical information that is not personally identifiable.

⇒ Eliminate insurers' current ability to transfer private medical information under [redacted] enumerated in Montana law (i.e.– detecting or preventing fraud, verifying coverage or benefits, conducting internal audits, or evaluating medical care.)

* **SB103 requires insurers to keep a record for three years whenever they make a secondary disclosure of private health care information to 3rd parties, and to make that record available to the insured upon their request.**

SB 103 and Private Medical Records

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE Jan. 15, 1999
BILL NO. SB 99


Marketers, Information Brokers, etc.
Agents, Adjusters, Claim Handlers, Auditors, Actuaries, Underwriters, Etc. (§§3, 12)
Other Insurance Companies, Organizations, Producers, etc. (§4)
Marketers, Information Brokers, etc.
Researchers (§10)
Potential Buyers, Mergers, etc. (§11)
Insurer
Law Enforcement, Regulators, Govt. Authorities, etc. (§§6, 7, 9, 16)
Consumer Reporting Agencies (§13)
Marketers, Information Brokers, etc.
Individual's Health Care Provider(s) (§5, 15)
Individual
Individual's Employer(s), Group Policyholder, etc. (§§14, 17)
Marketers, Information Brokers, etc.

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE January 15, 1999
BILL NO. SB103

The Washington Post

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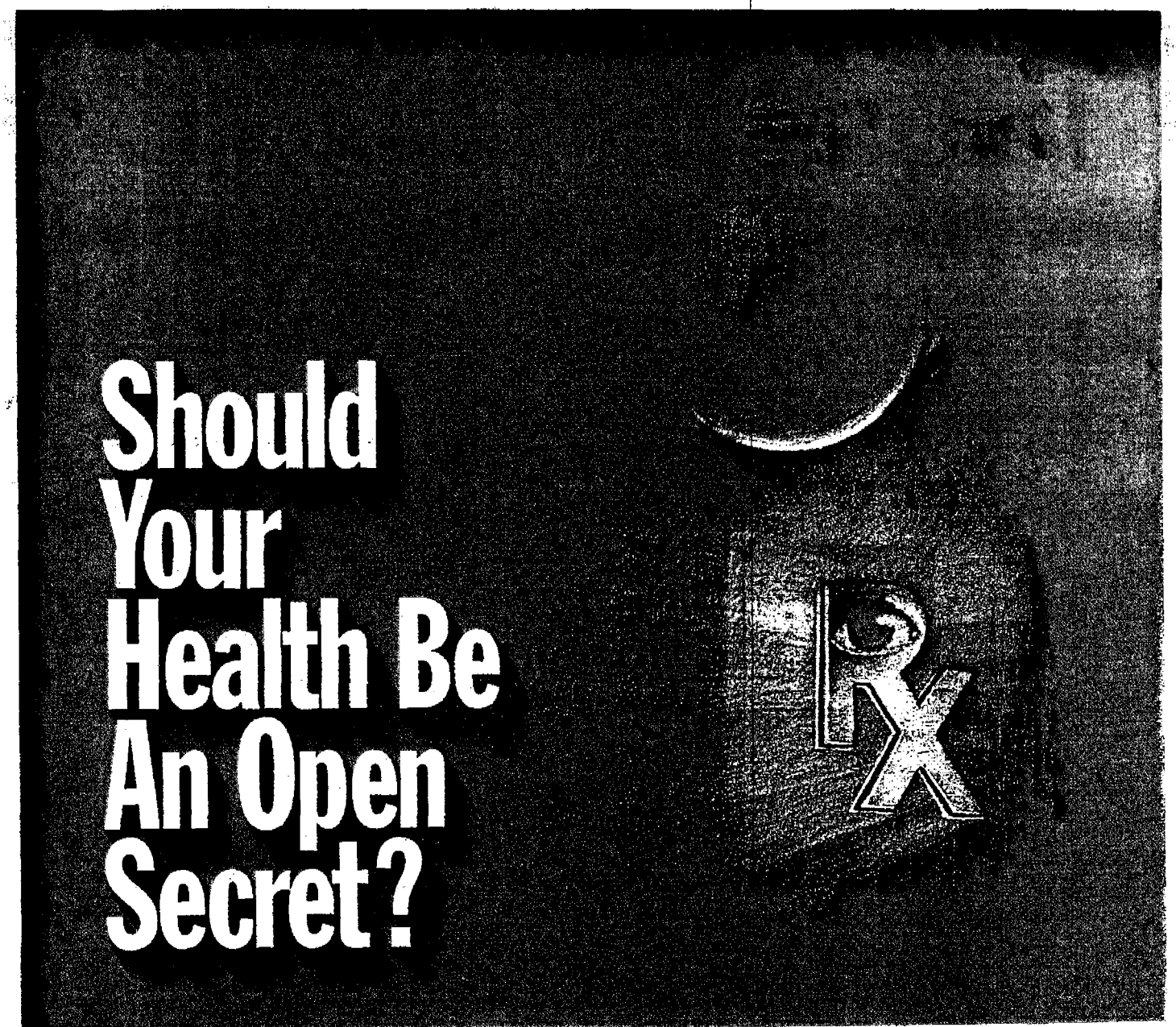

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RUSSIA'S ENVIRONMENTAL NIGHTMARE

A HOUSE WITHOUT NEWT

RETIRING TO THE OLD CAMPUS

What's Private?

Health care companies are sharing confidential patient prescriptions

By Robert O'Harrow Jr.
Washington Post Staff Writer

Joan Kelly knew she would save money at her pharmacy when she used her prescription-drug card to buy an antidepressant her doctor prescribed to help her sleep. Instead of paying $17 for a month's supply of trazodone, she paid just $8. But Kelly didn't know that when she filled her prescription last fall at a drugstore in Austin, Tex., she would also be swept up in a technology-driven revolution to control medical costs, a new kind of managed care that trampled on her notions of privacy.

Sensitive information about her prescription was flashed to a company in Scottsdale, Ariz., that administers her pharmacy benefit on behalf of her health insurance plan. Computers instantly matched her information with other data previously collected about medications she had been taking, and the new data was stored for review by PCS administrators.

A few months later, PCS sent Kelly's doctor a letter. At the request of Kelly's employer, it said, the company had peered into one of its databases of more than 500 million prescriptions, pinpointed her as someone who used antidepressants and enrolled her in a "depression program." Kelly's prescriptions would now be monitored, it said, and the doctor would be notified of any lapses. Kelly also would be sent educational material on depression.

The aim of the company, the letter noted, was to "optimize pharmaceutical care."

When Kelly's doctor told her about the letter, Kelly began to fret about being watched. She wondered if her bosses at Motorola Inc., which runs its own health insurance plan, would mistakenly think she was mentally ill.

"I feel it's an invasion of privacy," says Kelly, 50, who has worked at Motorola for 20 years as an engineering assistant. "I feel that if I go looking for a job or a promotion, they'll say, 'She's on antidepressants.' "

A Motorola spokesman says the company chooses not to receive information about specific employee prescriptions, but there are no laws preventing it from doing so. Indeed, there are few federal rules governing the use of personal information by companies such as PCS.

They are called pharmacy benefit managers. Not long ago, such companies primarily determined if individuals' prescriptions were covered by a health plan. Today, they are technology-savvy giants that stand at the heart of a dramatic change in how medicine is being practiced under managed care.

Using powerful computers, these firms have muscled their way into what was once a close and closed relationship between patients and their doctors and pharmacists. They have established electronic links to just about every pharmacy in the United States.

And they now gather detailed prescription information on the 150 million Americans who use prescription cards

PCS AND OTHER BENEFIT MANAGERS SAY prescription cards should be considered an unprecedented opportunity to improve medical care and save health plans money.

Working on behalf of health plans, the benefit managers say, they use the data to pinpoint dangerous overlaps in medications that shouldn't be taken together, or to suggest generic drugs that might be just as effective at a fraction of the cost. They also reach out directly to patients and advise them on when and how to take their medication, a practice they say saves money by improving individuals' health. Industry officials estimate that their companies have saved health plans billions of dollars in recent years.

"They're the patient's caretaker," says Delbert Konnor, president of the Pharmaceutical Care Management Association, an industry group that represents some of the nation's largest benefit managers. "They're monitoring the physician. They're monitoring the patient. They're also monitoring the costs.

BY TOM ALLEN—THE WASHINGTON POST

Bernard and Souzana Steverding say a prescription he was taking to lower his cholesterol was changed without his consent.

"The whole health care industry is in a state of strategic flux," Konnor adds. "It's the information that really is the valuable portion of what's going on."

But a growing number of patients, doctors and pharmacists complain that they never gave explicit approval for personal information to be collected and analyzed. Some doctors contend that the benefit managers have overstepped their roles as administrators, and they worry that new programs touted as improving care mask efforts to market drugs.

"Right now people live with this myth that the doctor-patient confidentiality is sacrosanct. We know that's not true," says Janlori Goldman, director of the Health Privacy Project at Georgetown University.

"Once they file a claim, once they fill a prescription, the personal, sensitive information they shared with their doctor is fair game," she says. "The information about them essentially becomes a commodity."

Some specialists fear that patients anxious about giving up their privacy may ultimately lose trust in the medical profession.

"There's a fundamental realignment of the players here," says Daniel Wikler, a professor of medical ethics at the University of Wisconsin. "The question is: Who is the patient supposed to look to?"

Regulators in Nevada, Ohio and elsewhere have begun examining possible violations of state confidentiality laws or regulations protecting medical records. Legislators in Virginia, New York and elsewhere also have begun considering laws that would give their states more control over pharmacy benefit managers.

"By what authority do these companies believe they have a right to collect this information?" asks Charles Young, executive director of the Massachusetts Board of Registration in Pharmacy. "And once they get it, how are they using it? Is it in the best interest of the patients? Or is it in the best interest of the company?"

Pharmacy benefit managers have been in business for more than two decades. They began playing a more central and controversial role in health care just a few years ago.

That's when drug manufacturers and pharmacy chains—including CVS, Rite Aid and others—began spending billions of dollars to acquire such companies as part of the race to capture a larger share of the fast-growing market for prescription drugs.

Improvements in computer technology also made it vastly easier to gather, store and track information about patients. This technology has become widespread in recent years, in part because of the plummeting cost of data storage and steady increases in computer processing speeds.

New benefit management companies popped up everywhere. Now more than 150 pharmacy benefit managers manage 1.8 billion prescriptions every year, and the number of people who use prescription cards has more than doubled since 1990 to more than 150 million, according to the industry association. At the same time, the proportion of prescriptions covered at least in part by managed care has soared from about one in four to almost two of every three, according to IMS Health Inc., a health care information company.

The market for prescription drugs is worth more than $81 billion annually, more than twice the amount at the beginning of the decade. Officials at the benefit management companies say that figure would be significantly higher without them. Studies by the General Accounting Office, the Congressional Budget Office and other researchers tend to support that contention.

A GAO report said that three plans in the Federal Employees Health Benefits Program estimated benefit managers saved up to $600 million in overall spending in 1995 "by obtaining manufacturer and pharmacy discounts and managing drug utilization." The report also found a "high degree of satisfaction" among federal employees with pharmacy benefit management services. A more recent analysis by the Congressional Budget Office concluded that pharmacy benefit managers have helped to slow the rising cost of prescription drugs. The authors suggested in July that the benefit managers accomplished this by directing doctors and pharmacists to use certain lower-cost drugs.

"We're achieving the dual objective of ensuring appropriate care for patients, while at the same time reducing pharmaceutical costs for health plans," says Blair Jackson, spokesman for PCS Health Systems.

TO ASSESS THE IMPACT OF THE BENEFIT MANAGEMENT revolution on personal privacy, it is necessary to understand how the system works. But that's not easy. Even many regulators and doctors have only recently begun to sort out how these companies gather, use and resell patient information.

To many consumers, the process is almost invisible, even though in most cases they have given their consent by signing up for a health plan, industry officials say.

It starts when someone uses a prescription card to get medication. Their information is electronically messaged to their health plan's benefit manager, a transaction that in most instances takes seconds. A computer checks to see if the medication is covered and whether the drug is safe for a particular patient, in many cases as the patient waits for the prescription to be filled.

The computers also match the prescription against a formulary, a list of medications the benefit managers have arranged for health plans to buy at a lower cost or that have been determined to be more effective. Health plans often get the discounts by pledging to use certain drugs exclusively. Sometimes the pharmaceutical companies give rebates as their drugs are dispensed, industry officials say.

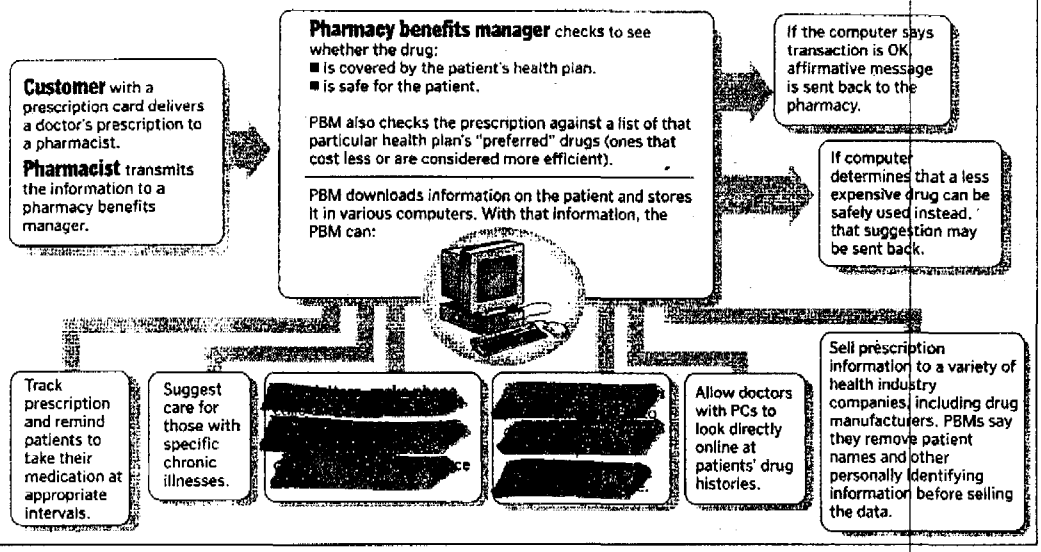
These formularies are the cornerstone of efforts to control drug costs. They also are a contentious issue. Critics, including some federal and state regulators, contend that benefit managers appear to have shown a bias toward the products of their parent companies.

A study two years ago by the office of the public advocate for the city of New York, for example, found that benefit managers steered doctors and patients toward their parent companies' drugs, an allegation that the benefit managers deny. Public Advocate Mark Green said the companies should not have such sweeping access to patient records.

They "are using medical histories of millions of unsuspecting

The Path of a Prescription

Here is how information from a drug prescription typically makes its way to a pharmacy benefits manager–and where it may go from there.


Customer with a prescription card delivers a doctor's prescription to a pharmacist.
Pharmacist transmits the information to a pharmacy benefits manager.
Pharmacy benefits manager checks to see whether the drug:
■ is covered by the patient's health plan.
■ is safe for the patient.
PBM also checks the prescription against a list of that particular health plan's "preferred" drugs (ones that cost less or are considered more efficient).
PBM downloads information on the patient and stores it in various computers. With that information, the PBM can:
If the computer says transaction is OK, affirmative message is sent back to the pharmacy.
If computer determines that a less expensive drug can be safely used instead, that suggestion may be sent back.
Track prescription and remind patients to take their medication at appropriate intervals.
Suggest care for those with specific chronic illnesses.
[redacted]
Allow doctors with PCs to look directly online at patients' drug histories.
Sell prescription information to a variety of health industry companies, including drug manufacturers. PBMs say they remove patient names and other personally identifying information before selling the data.

THE WASHINGTON POST

patients. This is as little known as it is wrong," Green said. "It would be hopelessly naive to trust the voluntary virtue of these PBMs."

If the benefit manager's computer approves a transaction, an affirmative message is sent back to the pharmacist. But if it determines that a less expensive drug can be safely switched, that suggestion is sometimes flashed back. PCS offers pharmacists up to $12 to secure approval from a patient and the patient's doctor for a "therapeutic interchange" of certain drugs. A change can't be made without such approval, PCS officials say.

Meanwhile, a patient's information is stored in various computers, including data warehouses operated by the benefit managers. The technology allows the benefit managers to keep close track of individuals. In some cases, they remind patients to refill prescriptions and take their medicine at appropriate intervals. Medical officials say that up to half of all patients with some conditions—such as hypertension or high cholesterol—fail to take their medicine as prescribed.

THE BENEFIT MANAGERS ALSO CAN TRACK PEOPLE with chronic illnesses and offer suggestions about their care. These increasingly common efforts are known as "disease management" programs. One of the problems with these programs is the risk of misidentifying a person's ailment. Medical specialists say that's because certain drugs can be used to treat different problems.

Kelly, the Texas woman, says she was mistakenly enrolled in a program called "Journeys: Paths Through Depression." She took antidepressant medicine because she was having trouble sleeping because of menopause, she says, not because she was mentally ill. Karen Hill, the physician who was treating Kelly at the time, confirms Kelly's account.

In the letter, the company acknowledged the possibility of making an incorrect assumption about a patient's ailment and said those who have questions should consult their doctor.

Kelly says she had no idea when she enrolled in her health plan that it would open the way to close scrutiny of her prescriptions. "Mainly, what you're looking at is what you get and what you pay. I wasn't even thinking about personal information going out," Kelly says. "With managed care, I know it's getting more convoluted. But this never occurred to me."

Motorola officials say there was no reason for such anxiety. They describe the PCS effort as a "stigma-free mental health" program that provides employees with help and educational material about depression. As of this fall, 167 of the 5,721 employees enrolled in the program have opted out.

Connie Giere, a benefit official at Motorola, says information about patients is protected. "Obviously, we own that data," she says. "But we have chosen not to receive that data because it's counter to our philosophy of confidentiality." Motorola officials say the company chooses only to receive general reports about trends, not the names of employees or other personal information.

[redacted]

phone calls and faxes. Some benefit managers also send messages to pharmacists as patients wait for their prescription.

Bernard Steverding of Fairfax County, Va., received a letter several months ago that said the prescription he was taking to lower his cholesterol had been changed by a pharmacy benefit manager to another drug. The letter he received was typical, but it made him furious.

The letter, from a company now called Express Scripts/ValueRx, said: "When we find a medicine that we believe to be better for a particular patient, we review the patient's medication profile and then confirm with the prescribing physician that a change of medication is appropriate. We know that the only way to help control prescription drug costs is in partnership with you and your doctor."

Steverding and his wife say the letter arrived after the new prescription was filled and the change was made without his consent. Souzana Steverding says her husband wasn't sure if he should take the new drug concurrently with the remaining pills he had under the old prescription. "We got this new prescription and didn't even know what it was for," she says. "Nobody told us you can't take these two together."

Dan Cordes, a vice president at Express Scripts/ValueRx, says Steverding had given his consent to the program by signing up with his health insurance plan, which authorized the collection of his prescription information. Cordes says Steverding's doctor approved the switch. "It's a totally voluntary program," Cordes says.

Officials at benefit managers say they take great care with the information they collect and understand its sensitivity. At PCS, for example, employees must sign a pledge that they will respect the confidentiality of personal records. Patient information also is encrypted or depersonalized whenever PCS transmits it.

"We clearly recognize that by being a part of the health care system we have to abide by this type of ethics," says Nick Schulze-Solce, a vice president for health management services at PCS.

But given the limited oversight by state and federal authorities, there's no way to guarantee information will be used appropriately. In Las Vegas last year, patients who shopped at three independent drugstores later received $5 coupons and promotional fliers in the mail from a pharmacy chain, American Drug Stores. Among them was Mary Grear, a pharmacist and owner of the independent stores. Grear wondered why she and so many of her customers received the same flier. By looking in her own computers, she discovered they all had the same pharmacy benefit manager, a company owned by American Drug Stores.

[redacted]

Grear says she was outraged, both as a patient and a pharmacist. "I mean, it's medical information. That's how it should be used. It isn't for marketing. I believe it's between me and my health professional."

State authorities also were unsettled.

"Something like this has never happened before," says Larry L. Pinson, president of the Nevada State Board of Pharmacy, who describes the prescription records involved as "very, very private medical histories."

In response, regulatory officials in Nevada recently sent out a stern letter to 275 pharmacy benefit managers and other administrators, warning that many of the companies' activities may be illegal. "You are now on notice," the letter said, "and the board hopes that these illegal practices will now stop."

Dan Zvonek, a spokesman for American Drug Stores, says the sharing of patient records by the companies was a mistake that would not happen again. He acknowledged that pharmacy benefit companies are struggling with privacy issues, trying to determine what's appropriate as financial matters take an ever larger role in decision-making.

"You run this risk of stepping over those boundaries of confidentiality. But no one knows where those boundaries are," Zvonek says. "You're running a risk of ignoring the health care aspect and focusing on profit."

One source of profit for the benefit managers is the resale of aggregations of patient data. Although benefit managers remove patient names and other personally identifying information from the records, such data has become increasingly valuable for drug companies and health researchers.

Drug companies mine the data, for example, to track how much a health plan spends on each specific drug and to try to document whether treatment resulted in the desired outcome. They also use the information to measure the success of direct marketing campaigns and to focus sales forces on doctors who prescribe certain medicines.

RAYMOND GILMARTIN, CHIEF EXECUTIVE OF MERCK & Co., the giant pharmaceutical company that owns Merck-Medco, says that by monitoring how diabetics take their medication, the firm can save health plans $260 a year per diabetic by keeping them well—and out of the hospital.

"This is exciting stuff," Gilmartin says. "This is the information everyone is looking for and that everyone wants."

Among the many unresolved questions posed by benefit managers is who has the final say on how personal data is used and maintained. In most cases, according to Schulze-Solce, the health plan that has contracted with a benefit manager to gather the information owns the information.

In many cases that owner is an employer that provides its own health insurance. "That of course is something that needs to be recognized," says Schulze-Solce. "For society, it is important to get their arms around that because that is a potential source of a leak. . . . In theory, [privacy] is depending on the self-discipline of those companies."

In any case, officials at pharmacy benefit managers say patients, doctors and the rest of the medical community might as well get used to them. Not only are they increasingly important to the health care system, but they're not going away anytime soon.

As medical professionals come to rely on a person's genetic history to recommend treatments, even more detailed data will be needed to provide proper care. Schulze-Solce says pharmacy benefit managers will be expected to help fill that need.

He likens the development of pharmacy benefit managers to the evolution of nuclear bombs: "In the case of nuclear weapons, you try to contain the risks," he says. "Trying to go back is moot." ■

Your medical records aren't private

By BILL WOLFE
Gannett Newspapers

You smoked marijuana when you were young — and you did inhale.

You mentioned it to your family doctor, thinking it might relate to current health concerns, assuming the conversation was confidential.

Ten years ago, you were treated for cancer. It's in remission now, but as you apply for a new job, you worry. Your prospective employer might be reluctant to hire someone who could incur huge medical bills.

You're seeing a psychiatrist. It's helping a lot. But no one knows, and you'd like to keep it that way.

Are your medical records safe and secure?

With computerization, your personal health history is more accessible to a wider array of inquiring eyes than ever before.

That can include health care workers, insurance providers, government agencies — even employers worried about insurance costs or the prospect of workplace violence.

[redacted]

It's an increasingly controversial issue, as the federal government has proposed creating a nationwide database of medical information.

"Revolutionary changes are taking place now and in the next year that will alter irrevocably the landscape of medical privacy forever," said Mimi Azrael, a Baltimore, Md., lawyer active in privacy concerns, civil rights and labor/employment rights.

"What's emerging is a loss of patient rights in the control of their personal medical information," she said.

"People think that their medical records are protected; they assume that they are," said Ari Schwartz, a policy analyst with The Center for Democracy and Technology in Washington.

In fact, Schwartz said, there's [redacted]

Federal laws protect rental records, but not medical records — except for those related to HIV/AIDS. Some states have passed medical-record privacy laws, but others provide almost no protection.

"What you have is a patchwork quilt of state laws," Azrael said. "Some are strict. Some are not so strict."

You may also have unknowingly signed away much of your medical-record privacy. Some physicians and hospitals ask patients to sign consent forms that include a blanket exemption for release of your information. Drug stores have sold medical information to pharmaceutical companies, which used the information for direct marketing to the patient.

Medical information has become a valuable commodity, Azrael said.

Information brokers, which collect medical information just as credit bureaus collect financial data, are hard at work. They already sell lists of patients, arranged by ailment and ZIP code.

"Depression, incontinence, penile disfunction ... you name it, there's a list of it," Azrael said.

[redacted]

What can you do?

What can you do to make sure your private medical records stay private?

Not a lot unless you can afford to pay your bills out of pocket, thus eliminating insurance transactions. Two suggestions:

1. Read disclosure forms before signing them at doctors' offices, clinics and hospitals. If the language seems broad _ authorizing disclosure of "any" or "all" records, for example _ strike out the offending lines, write in your own more restrictive language and initial it.
   Authorize release of records only for a specific procedure and only to your insurance company, for example, not to an employer or other third party.
2. Be careful, too, in responding to surveys, questionnaires or even pharmaceutical rebate offers that disclose any medical information.

— Gannett News

Records pass through a lot of different hands

More than a third of all Fortune 500 companies acknowledge using medical records when deciding to hire, fire or promote employees, according to a survey by David F. Linowes, professor emeritus of political economy and public policy at the University of Illinois.

And the percentage of smaller companies misusing access to medical records is probably even higher, he said.

Doctors generally are cautious about sharing patients' records. The Oath of Hippocrates, which doctors take, states, "Whatsoever I shall see or hear in the course of my profession ... I will never divulge, holding such things to be holy secrets."

Still, a combination of trends is eroding patient privacy.

Factors include increased scrutiny of medical claims by health maintenance organization insurance companies and the growing use of networked computers for storing medical records.

Your private medical data can pass over multiple desks as it travels from the doctor's office to an insurance company.

According to Beth Givens, director of the Privacy Rights Clearinghouse in San Diego,

[redacted]

"People talk, people spread things around, and it's disturbing that these kinds of things are going to be available," Macfarlane said.

— Gannett News Service

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE January 15, 1999
BILL NO. SB 103

Box 990 • 50 Sheridan Avenue • Shelby, Montana 59474
406-434-3100 • 1-800-331-4357 • Fax 406-434-3135

January 13, 1999

Senator Al Bishop, Chair
Senate Public Health and Welfare Safety Committee
Helena, MT 59604

Re: Inappropriate Activity on the part of PCS in patient care

Dear Sir:

I want to let you know about an episode of inappropriate insurance company involvement in direct patient care which occurred a number of months ago in which I reported to the State Attorney General's office. I was informed by letter from PCS that they had mailed a letter along with a coupon to a patient of mine from the Valier area for medication other than what was prescribed by myself. The patient was prescribed a long-acting antihistamine by me, and it was suggested in the letter to the patient that he could in fact switch from the prescribed medication to an over-the-counter medication, namely a Dimetapp product which contains a decongestant as well as a sedating antihistamine; and is certainly not an equivalent to that which was prescribed. Without doubt, PCS overstepped their bounds by interfering in the patient-physician relationship in this situation, and in fact, were acting as a prescribing entity in the form of the letter mailed to the patient.

If, in fact the patient had followed the direction of the letter from PCS, it could have compromised the patient's health as the sedating antihistamine in the over-the-counter medication could compromise his ability to safely operate power equipment on his farm and the decongestant in the Dimetapp product could create medical complications including hypertension and cardiac dysrhythmias if used on a long-term basis.

I believe appropriate action should be taken by our representatives to prevent intrusion of such entities as PCS and insurance companies, from interfering with the patient-physician relationship, particularly when it involves the prescribing of potentially dangerous medications.

If you have any questions, please feel free to contact me at the number above.

Sincerely,

Daniel P. Rausch, M.D., ABFP

April 1998

Dr. Daniel Rausch
PO Box 519
Shelby MT 59474-0519

PCS HealthSystems

Dear Dr. Rausch,

PCS Health Systems, on behalf of Western Mutual Insurance Company, would like to inform you of a new program. PCS Health Systems, an information-driven health solutions company, provides managed pharmaceutical care for 56 million Americans. Using its information resources and expertise, PCS develops programs that can directly and positively impact the health of consumers.

Western Mutual Insurance Company has implemented this program to encourage the responsible use of non-prescription medications as a treatment option whenever it seems medically appropriate. Patients who may have mild ailments, such as colds, pain, allergies or heartburn, are identified to receive informational tip sheets and money saving coupons. You may receive subsequent mailings in conjunction with this program according to the following timeline:

PCS Health Systems, Inc.
9501 East Shea Boulevard
Scottsdale, Arizona
85260-6719

P.O. Box 52115
Phoenix, Arizona
85072-2115

602 391-4600

	[illegible]	[illegible]	[illegible]	[illegible]
January	X			
February				
March				
April			X	
May		X		
June				
July			X	
August				X
September				
October	X	X		
November				X
December				

This month, patients who may have mild allergic upper respiratory symptoms will receive information and a coupon for Dimetapp® Extentabs®.

Enclosed is a copy of program materials and a list of your patients who were selected to participate. These patients will receive program materials in approximately one week. If you have concerns about any patient on the list taking these medications, contact him or her directly. This program is not intended to replace your advice or therapeutic judgment.

We thank you in advance for your support of this program. If you have any questions or comments, please contact PCS at 1-800-353-6111.

Sincerely,

Marsha Moore, MD

Marsha Moore, M.D.
Chief Medical Officer

PCS Health Systems is a subsidiary of Eli Lilly and Company. PCS receives support for this program from Whitehall-Robins Healthcare, the manufacturer of Dimetapp® products.

Information-driven health solutions

April 1998

PCSHealthSystems

Dear Member,

PCS Health Systems, on behalf of Western Mutual Insurance Company, is committed to helping you benefit from the best quality care, including the latest information and treatment options available. PCS is an information-driven health solutions company that administers your drug benefits. When possible, we encourage the responsible use of non-prescription medications as your first treatment option, since they are safe and effective alternatives that can provide relief for many common problems.

PCS Health Systems, Inc.
9501 East Shea Boulevard
Scottsdale, Arizona
85260-6719

P.O. Box 52115
Phoenix, Arizona
85072-2115

602 391-4600

You may be among many Americans who suffer from the symptoms of allergies. We know that your allergy symptoms can cause congestion, but they also can affect your health, leaving you unable to experience the pleasures of daily life.

We are excited to provide you with information to help you:

- Understand the causes and symptoms of allergies, so you can avoid allergy triggers
- Be well informed about treating your allergies and those of your family
- Recognize when to see your doctor about allergic symptoms.

We have also enclosed a cost-saving coupon for Dimetapp®. Dimetapp®Extentabs® has been shown to be effective for the relief of upper respiratory allergy symptoms and contains an effective antihistamine to relieve sneezing, runny nose and itchy, watery eyes. Plus, it contains a nasal decongestant to help you breathe easier.

Persons with high blood pressure, diabetes, kidney disease, heart disease, or thyroid disease should consult their physician or pharmacist before using this product. Do not take this drug at the same time you are taking other allergy/decongestant or weight loss medications.

This is just one step in our commitment to provide you with the best in healthcare services. It is our pleasure to bring these educational, cost-saving materials to you. Please read package directions and warnings carefully before taking this or any medication. **This program is not intended to replace your doctor's care or advice. If you have any questions about your condition, or about this or other medications, please consult your doctor. If you have any questions or comments about this program in general, please contact PCS at 1-800-353-6444.**

Sincerely,

Marsha Moore, MD

Marsha Moore, M.D.
Chief Medical Officer

PCS Health Systems is a subsidiary of Eli Lilly and Company. PCS receives support for this program from Whitehall-Robins Healthcare, the manufacturer of Dimetapp® products.

Information-driven health solutions

Recommendations For Allergy Sufferers.

Your allergy, also called allergic rhinitis, is the body's response to an offending allergen. Some common allergens are pollen, dust, mold and animal dander. When these and other allergens come into contact with cells lining the nasal passages, they trigger an allergic response. This occurs within minutes in individuals who are allergic. Histamine and other substances are then released and produce the familiar symptoms of sneezing, runny nose, nasal congestion and itchy, watery eyes.

HOW TO REDUCE EXPOSURE TO OFFENDING ALLERGENS:

- Avoid dust. Be sure to vacuum the house thoroughly and frequently.
- Use an air conditioner in your home and car, particularly during the seasons you suffer most. Change filters regularly.
- Try to avoid pets and pet dander.
- Avoid smoke of all types, including smoke from fireplace fires.

FOR SYMPTOM RELIEF:

Antihistamines block histamine released when your body reacts to an allergen. Some allergy formulas also contain a nasal decongestant for additional relief.

DIMETAPP® EXTENTABS®— ALLERGY RELIEF WITHOUT A PRESCRIPTION:

- Contains Brompheniramine, an effective antihistamine and one of the least sedating antihistamines that you can purchase without a prescription.
- Provides an effective nasal decongestant to shrink swollen nasal passages so you can breathe easier.
- Delivers effective relief with 12-hour dosing.

© 1998 Whitehall-Robins Healthcare

SAVE $2.00
on any
Dimetapp Formula
(except trial size)

RETAILER: Mail this coupon to: Whitehall-Robins Healthcare, P.O. Box [illegible], El Paso, TX [illegible], for reimbursement of face value plus 8¢ handling if redeemed in accordance with the Whitehall-Robins Healthcare Promotion Policy, available upon request. Any other use constitutes fraud. Void if reproduced, transferred, or where taxed, prohibited or restricted by law. Customer pays sales tax. Cash value 1/100 of 1¢. LIMIT ONE COUPON PER PURCHASE.

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5 00031 30076 1 (8101)3 12139 1200

Mental Health Association of Montana

An Affiliate of the National Mental Health Association

State Headquarters • 25 So. Ewing, Suite 200 • Helena, Montana 59601
(406) 442-4276 • Toll-Free 1-800-823-MHAM • Fax (406) 442-4986

SENATE HEALTH & WELFARE
EXHIBIT NO. 8
DATE January 15, 1999
BILL NO. SB 103

Board Members
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Helena

President-Elect
Robert VanderAarde
Great Falls

Secretary
Robert Torres
Helena

Treasurer
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Executive Director
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Daniels County
Great Falls
Sheridan County
Sweet Grass-Stillwater
Counties

SENATE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
JANUARY 15, 1999

TESTIMONY OF ANDREA MERRILL, EXECUTIVE DIRECTOR
MENTAL HEALTH ASSOCIATION OF MONTANA

SENATE BILL NO. 103, INTRODUCED BY SENATOR EVE FRANKLIN REVISING THE INSURANCE INFORMATION AND PRIVACY ACT

The Mental Health Association of Montana supports this legislation because the amendments provide needed protections against unauthorized disclosure of personal or privileged health information. As you are aware, information that a person may divulge to a healthcare provider can be extremely personal. It is information, especially in its totality, that should not be easily available. As true as this is with physical illnesses. it is especially so when a person seeks treatment for a mental or emotional problem. In part, this is due to the nature of the problem, but it is also due to the unfortunate stigma that still surrounds mental and emotional disorders.

The National Mental Health Association has developed *Standards for Responsible Management of Consumer* Information. The amendments in this bill comport with the consumer protections suggested in this document. I will submit a copy of the document for the record.

Thank you for your interest in protecting health care consumers.

SENATE HEALTH & WELFARE
EXHIBIT NO. 9
DATE January 15, 1999
BILL NO. SB 103

TESTIMONY OF YELLOWSTONE COMMUNITY HEALTH PLAN ON SB 103

Mr. Chairman and members of the Senate Public Health Committee. For the record I am Tom Ebzery, a Billings attorney representing the Yellowstone Community Health Plan. YCHP is a Health Maintenance Organization regulated by the Insurance Commissioner. We are owned 50% by Saint Vincent Hospital and Health Center and 50% by Blue Cross/ Blue Shield of Montana. Currently we have over 12,000 Montanans in our plan.

YCHP approaches this bill with very mixed feelings. First is the question as to whether theInsurance Information and Privacy Protection Act passed by this legislature in 1981 broke.or is some minor tinkering necessary. In its present form we believe the bill goes well beyond tinkering and could be characterized as a solution waiting for a problem.

On the other hand this Act with very few amendments has been on the books for 18 years and in t he age of technology and other developments deserves a review. We would be happy to work with the bill's sponsor, the Insurance Commissioner's Office and others to make necessary modifications updating the bill. I believe there is time to do this at the subcommittee level. This bill should be assigned to a subcommittee. Simply taking a bill from a national model doesn't always work, particularly in rural Montana.

Our second concern is whether or not there are abuses ongoing now that mandate drastic changes or are we like we did two years ago in passing Network Adequacy legislation gearing for the future? My review of the bill before you and its background seems to favor the latter. For this reason alone it is necessary to look at the act and correct the definite shortcomings and leave a number of provisions out which may be used in Massachusetts but have no direct place in Montana.

We have concerns regarding the dramatic change in 33-19-204: Content and disclosure of authorization forms. Under this bill the authorization must have 8 elements. The 8th adds new language which warrants close scrutiny. It has a preceding 3-year provision, which might be difficult to produce. It could be a problem if it includes data that t he plans have not been required to capture previously. Second there is no time limit on the requirement to provide subsequent disclosures.

Another uncertainty is adding the words "directly or indirectly" to the definition of Medical record Information on page 4. It is personal information that is obtained directly or indirectly from a medical professional or medical care institution. What does this

mean? Indirectly are all kinds of things to all kinds of people and those required to comply with the law need better direction.

Effective date: There is none in the bill. Is it October 1? If so that simply would be burden insurers or HMOs would have significant problems. It seems that in recent years legislation has been tailored to expiration dates in policies, normally December 31, or January 1. In this instance it is questionable as to whether an insurer could meet these dates on such a drastic change in the way they handle privacy matters. For example when we passed the Network Adequacy legislation in 1997 it anticipated rulemaking before implementation next year. We have been meeting since 1997 and we are still not at a formal rulemaking stage. I believe the effective date for legislation as legally significant as privacy not occur until significant rulemaking occurs and clearly no earlier than January 1, 2000.

We will offer other specific comments, concerns and amendments. This bill is a first start but is badly in need of a realistic scaleback and clearly more definition.

Thank you.

ROLL CALL

SENATE COMMITTEE **PUBLIC HEALTH, WELFARE & SAFETY** DATE Jan 15, 1999

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BARTLETT	✓		
SENATOR BERRY	✓		
SENATOR BOHLINGER	✓		
SENATOR CHRISTIAENS	✓		
SENATOR DEPRATU	✓		
SENATOR ECK	✓		
SENATOR FRANKLIN	✓		
SENATOR GRIMES	✓		
SENATOR HARGROVE	✓		
SENATOR THOMAS, VC	✓		
SENATOR BISHOP, CHAIR	✓		

Attach to each day's minutes

DATE January 15, 1999

SENATE COMMITTEE ON Public, Health, Welfare & Safety

BILLS BEING HEARD TODAY: SB 99, SB 103

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Betty Beverly	MSCA	103	✓	
Kelley Hubbard	MSCA	103	✓	
Vera Bertolsen	M.S.C.A.	103	✓	
Russell Hill	State Auditor	103	✓	
Scott Asay	COMS	99	✓	
Linda Wolfe		99	✓	
Christie & Wes Burnett				
Cristal Burnett				
Perry & Luke Johnson	Ravalli Co Sheriff	99	✓	
Tom Ebzery	YCHP	SB103	✓ w/amend	
Brian E. Garrity	MT Mental Health Assn	99 103	✓ ✓	
Andrea Merrill	MT Mental Health	103	✓	
Rebecca Moog	MWL	103	✓	
Mark O'Keefe	STATE AUDITOR	99+103	✓	

VISITOR REGISTER

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REGISTER.F10

DATE January 15, 1999

SENATE COMMITTEE ON Public Health, Welfare & Safety

BILLS BEING HEARD TODAY: SB 99, SB 103

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
TIM SHANKS	MONTANA POLICE PROT ASSN	SB 99	X	
GREG NOOSE	MT LAW ENFORCEMENT FUNDS	SB 99	X	
DOUGLAS H. NEIL	MT. ST. FIREFIGHTERS ASSOC	SB 99	X	
TODD THUN	MONTANA NURSES' ASSOC	SB 99 SB 103	X	
SAM BUTLER	MNA	SB 99 SB 103	X	
TROY MCGEE	MT ASSOC CHIEFS POLICE	SB 99	X	
PAT CLINCH	MSCPFF	SB 99	X	
SUSAN WITTE	BLUE CROSS BLUE SHIELD	SB 99	X Amendments	
DON ALLEN	MMBP	SB 103	X (w/amds)	
GLORIA HERMANSON	MT PSYCH. ASSOC	SB 103	X	
GREG VAN HORSSEN	STATE FARM INS	SB 103		X
JACQUELINE J. LENMARK	AM INS ASSN	SB 103	✓ w/amdt	

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MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

SUB COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SB 103

Call to Order: By **CHAIRMAN FRED THOMAS**, on January 22, 1999 at 11:20 A.M., in Room 402 Capitol.

ROLL CALL

Members Present:
Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Eve Franklin (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Subcommittee meeting & Date(s) Posted: SB 103, 1/20/1999
Executive Action:

SUBCOMMITTEE MEETING ON SB 103

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Informational: **Russell Hill, Chief Legal Counsel**
State Auditor's Office
Susan Witte, Representing Blue Cross and Blue Shield of MT
Nancy Ellery, Administrator, Health Policy and Services Division, DPHHS
Tom Ebzery, Representing Yellowstone Community Health Plan
Paige Dringman, Representing Health Insurance Association of America

Jon Metropoulos, Representing Farmers Insurance Group of Companies

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order and asked **SEN. EVE FRANKLIN** to start by explaining the bill.

Opening Statement by Sponsor:

SEN. EVE FRANKLIN said that she had brought extra charts so people could follow along because the visuals sure helped her. She asked **Russell Hill** to please chime in if she makes a mistake.

EXHIBIT(phs17b01)

SEN. FRANKLIN said the purpose of bill **SB 103** is right now an individual obviously gives their personal information to their insurer. There is no limitations as to how that happens between that reciprocal relationship. There is no limitation here (she is showing a designated area on the chart). The health care provider, it says individual, group policyholder, employer on their chart. There is no limitation on this under existing law, and this bill won't change that.

CHAIRMAN THOMAS states the purple arrows are current law.

SEN. FRANKLIN agrees the purple/blue arrows are current law and there is no change in that. Even the red arrows, there is also in this bill, no change in that. This does not affect for the purposes (because she has no color), the arrows in red on their chart, are also existing law. What they do is they allow, the insurer to give information without authorization, let her underline that without authorization to all these people. And that is existing law and that doesn't change in this bill. Right **Russell**?

Discussion:

Russell Hill, Chief Legal Counsel, State Auditor's Office, Commissioner of Insurance, answered, it doesn't change to the extent that they can still do it with the caveat of the agreement.
SEN. FRANKLIN replied right, but it doesn't change this. But it doesn't do, when he says it is the caveat of the agreement, the authorization is in current law now. Under current law there is ... she asked **Russell Hill** to explain the nature of that agreement.

Russell Hill said, let him just quickly have them look at the color chart hand out which is the same as the one that **SEN. EVE FRANKLIN** has put up on the board. The blue arrows are information coming in to the insurer, that's pursuant authorization forms. It is his understanding that is really no change. That is not where the concerns are. First of all the information comes into the insurer, if the insurer as part of that authorization has permission to pass the information along, nothing changes that. They can get those blanket authorizations and pass the health care information to whoever they want to. The red arrows on this chart are situations currently in law, where an insurance company can pass along private health information, even without the permission of the individual that they refer to.

SEN. FRANKLIN confirmed, so those boxes in the red is existing law without permission.

Russell Hill said and the section numbers there refer to the section numbers in the statute that they amend, that already allow disclosures without permission of the individual.

SEN. FRANKLIN stated so in this bill, right now, the insurer can still give other insurance companies the information. They can give agents, adjusters, claim handlers, auditors information without additional authorization. They can give it to potential buy-out-mergers. They can give it to consumer agencies, to law enforcement, to researchers without any separate authorization other than what is in current law.

CHAIRMAN THOMAS said that is not in current law. The insurance company cannot send him data on a client of his that he doesn't have, no.

SEN. FRANKLIN asked what is he trying to do, what role?

CHAIRMAN THOMAS responded, as an agent.

Russell Hill said, he disagrees.

CHAIRMAN THOMAS asked coming right out of the Auditor's Office, is that an edict right out of the Auditor's Office, that it can be done. Is his statement made up by the Auditor's Office, or is it a law?

Russell Hill said, the law says, if you look at subsection 3 and 12, up on the board at that red box up to the left of the insurer. There are broad provisions to allow an insurer to pass this information along even without the permission of the

individual. That is exactly. If he tells him the edict, he will chase it down and if he is wrong about that, they will change.

SEN. FRANKLIN said that may be a separate issue in terms of some ruling that has come out of the Auditor's Office, but she can't speak to it.

Russell Hill asked if it would help to look at the statute and just see what the statute says.

CHAIRMAN THOMAS said he thinks it helps to just use common sense.

SEN. FRANKLIN asked him to explain to her his situation, so that she can understand it.

CHAIRMAN THOMAS said he thought he already did. The insurance company is not going to send him data as an agent of their's about a client of his, that is their private medical data. It has been brought out by the Auditor's Office that that is against the law and policed, in particular MMBP (Montana Medical Benefits Plan) to death on that very thing. So it might be good to find out what authorization they are using for that.

Russell Hill asked if it was worth it to look at the statute that he thinks is controlling here, aside from what ever the Department has done?

SEN. FRANKLIN said because she thinks that's a different issue. It may be an issue that is personal and he could take it up with the Auditor's Office.

CHAIRMAN THOMAS said okay and no it is not a personal issue. He thinks it is right what they are doing. He doesn't think they should do that. He doesn't have any reason to have that information. But it is current law.

SEN. FRANKLIN said she thought for the purposes of this discussion, the point is this bill doesn't change current law, whether there is a disagreement in the interpretation or not. This bill doesn't change the relationship of those red arrows just for the purposes of that discussion.

SEN. FRANKLIN said so let her go to what it does change. What it does change...

SEN. GRIMES said he understands that what they are doing is trying to get an overview here and then they can list their differences. He is trying to understand what they are doing. He is trying to get the overview.

SEN. FRANKLIN said it was from her understanding also, these folks can share information with each other, under current law.

CHAIRMAN THOMAS reiterated, under current law.

SEN. FRANKLIN said, what this law does is .. these folks... in the secondary ring of red boxes, they want to pass that information on, and they need to get a separate written authorization from that individual.

Susan Witte, Representative, Blue Cross/Blue Shield asked, when they want to pass it on to anybody?

SEN. FRANKLIN explained if they want to pass it on to these people, or anybody, or each other. If they want to make a disclosure beyond their... they don't need permission according to what she understands is in existing law. The don't need permission to get it here (indicated on chart on board). But this level says, you have got to get information, you have got to get authorization from the individual if you are going to pass it on here... and pass it on there. So in a way it kind of puts a gate in terms of where that information can then go after that.

Then the other issue that was a concern to some people was the record keeping provision. Again from what she understands, there is a 3 year record keeping provision that is incumbent upon these folks to keep that 3 year record of where they have disclosed the information, but not with these people. That is it in a nut shell. She thought they could go on to the actual individual amendments and go through them.

Informational:

CHAIRMAN THOMAS said they have a plethora of amendments.

SEN. GRIMES said he didn't want to shorten her presentation.

SEN. FRANKLIN said she just wanted to make it as simple as possible because the other information is more arcane. She just wanted to do an overview of the record keeping because that is an issue. The 3 year record keeping area challenges the insurer. A major change that this legislation does, is not allow secondary disclosure, depending upon how you look at it, secondary disclosure, from those other boxes without separate written individual authorization from the individual. The middle insurer, no. But it does require it from that secondary ring, as she understands it.

CHAIRMAN THOMAS asked if that was the intention?

SEN. FRANKLIN and **Russell Hill** replied that is the intention.

CHAIRMAN THOMAS asked, how many amendments do they have? How many people have amendments that are present? Blue Cross?

Russell Hill said in the material that he handed out, that also included amendments from ACLI.

EXHIBIT(phs17b02)

CHAIRMAN THOMAS asked **Russell Hill** if this was his work?

Russell Hill responded it is. Those are the ACLI (American Council of Life Insurance) and there are some that are concerns that weren't in there.

Nancy Ellery said she'd start with the simplest amendment. It may not even be needed, but they are trying to protect themselves and the Department because they contract with insurers for the CHIP program and they contract currently with HMO's to provide physical managed care. They just want to make sure that the law allows them to continue to take the information they get from their contractors who are insurers and they can continue to send it to the Federal government. Because part of their contract with the Federal government is that they will take information about the services that have been provided and report back to them. Because they are footing a large part of the bill. They think this clearly gives them that exemption and it would make them feel better if it was in the bill clearly. She thinks other interpretations are that it is okay, but they just want to be real sure that their programs are exempted. They don't intend to pass it on to anybody for marketing purposes, or whatever, all they want to do is give it to the federal government.**EXHIBIT(phs17b03)**

CHAIRMAN THOMAS said he had a question for **Nancy Ellery.**

SEN. FRANKLIN said she hasn't looked these amendments. These they just received today, so she doesn't have a real feel for how it fits in. But **Nancy** and **Russell Hill** has a conversation?

Russell Hill said his opinion is that they are not necessary, but they don't do any harm.

Nancy Ellery stated the amendments would make them feel a lot better.

CHAIRMAN THOMAS said the terms of conditions do not include an HMO maintenance organization, ..

Nancy Ellery continued,"administered by the Department" that is the clear difference.

Russell Hill said they are not talking about category's of insurance entities, they are talking about the Departments use of them in kind of a contractual relationship?

Susan Fox clarified that is not what that says. You don't administer a health maintenance organization, you contract with the health organization.

Nancy Ellery said let's take CHIP as a real good example. They administer the CHIP pilot through contracts with insurers, who are HMO's.

Susan Fox clarified, but that is not what this says. This says that health maintenance organizations, administered by the Department managed care organizations administered by the Department or other programs, administered by the Department, you don't administer an HMO. They contract.
Nancy Ellery asked **Susan Fox** how could they change it to show that they are administering the program that they use insurers to...?

CHAIRMAN THOMAS suggested they could say "administrated or contracted by" ? **Susan Fox** can figure it out.

Nancy Ellery replied, you get what they are trying to do.

SEN. GRIMES said maybe they were contracted just before health maintenance organization, and then strike the coma and put or.

Nancy Ellery stated, but that's not an insurer because that is just a regular...

Russell Hill suggested, does it work to say "insurance producer does not"....

CHAIRMAN THOMAS said he does not want them to micro-manage this, **Susan Fox** can figure this out. Is that fair enough **SEN. EVE**?

SEN. FRANKLIN replied, yes.

Motion: **SEN. FRANKLIN** moved **THE AMENDMENTS PREPARED BY JOHN C. KOCH, DPHHS.** (Motion was put on hold -same Amendments as indicated in Exhibit #3.)

CHAIRMAN THOMAS said to **SEN. FRANKLIN** he didn't know if there were going to have to worry about these amendment right now. **Susan Fox** is going to have to do some work on this, so lets hold for a while. They will have her come back with cleaned up amendments. They have about 4 or 5 different items that **Susan Fox** is going to work on.

Questions from the Committee Members and Responses:

SEN. GRIMES asked if he could talk about this in the big picture. Clearly there's a lot going on in the health care arena right now, including a very interest attempt, a genius attempt to create a health care data base. The issue here has a lot of interplay with confidentiality issues. Would it be their recommendation, in the big picture after they go through these issues and work on them, that they hold this bill until he can get the other one out of drafting, or at least get the language from **Susan Fox** out to find out what kind of coordination it would take to combine the two bills? What he wouldn't want to do, is if there is critical information that needs to be passed between entities in the health care data base, that could potentially be identifiable to an individual. He hasn't figured that out yet, because he has to go back and find some health care information data base project. He would be very concerned if they pass something out of here that would affect that in a negative way. That's a little bit selfish because it is his bill. He thinks that is a very very important bill for the State of Montana. And a very important step in the right direction. He would not want the two to conflict.

CHAIRMAN THOMAS said he would suggest that they do their work in the Subcommittee to work these amendments over. They will prepare the bill as the best they can, report it back to the Public Health Committee. And then what the Committee does there will be up to the Committee. If **SEN. GRIMES** wants to arrange a hold with **SEN. FRANKLIN** that would be between you and her. If that can't be done and you feel strongly you can ask the Committee to hold the bill, and table it, those are just those options. But this Subcommittee won't hold it. It would be a Committee decision rather than a Subcommittee decision. It would be **SEN. FRANKLIN'S** decision more than any. They'll let the process proceed.

SEN. FRANKLIN said that makes sense, let's do the work in the Subcommittee and see where we are after that.

CHAIRMAN THOMAS asked **Tom Ebzery** about the amendments he indicated he had.

Tom Ebzery, Representing Yellowstone Community Health Plan, said he has talked to the bills sponsor and to **Russell Hill** and others. He has asked that the effective date be January 1, 2000, under the provisions of the bill that they had before. The is a Rule Making provision in it and something that is sweeping as this is going to pass. He knows that the Yellowstone Community Health Plan, it is going to take them a while to get into synch and develop new procedures and so forth. Instead of October 1, a few extra months would assist them.

EXHIBIT(phs17b04)

SEN. FRANKLIN said she thought that would be fine. She would just take issue that it probably would affect community health plan making changes truthfully. For what she understands it is reasonable.

Tom Ebzery explained it is mostly procedural. He thinks they are going to have a learning curve here. They are going to need the time to make sure.

SEN. FRANKLIN answered absolutely and she thinks the Rule Making issue may even be more of an issue. She is just looking at what they do.

Tom Ebzery said he is talking about that and the Rule Making is the principal thing. This is not to preclude them from beginning Rule Making. They can begin Rule Making as soon as the bill leaves here, if they wish, but it wouldn't be effective until then.

SEN. FRANKLIN answered that's fine.

SEN. GRIMES asked what would be your major concern with the impact that this bill had on the community health plan?

Tom Ebzery answered he believes there will be some new procedures. They will have to do some changing, and there is going to be some Rule Making involved in this in terms of interpretation of what the definitions are. It will take some work.

SEN. FRANKLIN said she is not going to argue the point. She thinks it is reasonable to give them time, her concern is that the issue is overstated, just for the record. The issue is overstated, of how many procedural changes. From her understanding of the bill, she is not, just for the record, and she is not fighting the amendment, but her understanding of the bill is that the Community Health Plan probably is not doing very many of these functions that would require a change. They are

probably not brokering their information in the way that this bill would put some gates on.

Tom Ebzery answered that might be so, **SEN. FRANKLIN.** He said what **SEN. THOMAS** is common sense, might be the guide that they would use. When they have 12,000 enrollees they want to make sure they do the right thing.

SEN. GRIMES said it sounds great to him. For the purpose of this Subcommittee they need to understand what some of those examples are. That would help them put together the best bill, some examples of how current they use a discretion in judgement that this bill will now put into law. It will take it out of discretionary judgement and now put it into law, or even transferred information, that they currently do in their best judgement, and any way that this will eliminate those, they need to understand clearly as they go through the bill.

CHAIRMAN THOMAS said, okay **Susan Fox** will keep the amendment in order. He said **Paige Dringman** was next. She said as a procedural questions, she wasn't here for the Hearing because she was just retained the other day by the Health Insurance of America. She has looked at Blue Cross/Blue Shield's amendments and ACLI's, and maybe the best thing is to go to them because she doesn't have separate ones. She does have a couple of questions with regards to those amendments.

CHAIRMAN THOMAS asked **Paige Dringman,** if she wanted to get together with those people and they will meet again.

Susan Witte, Blue Cross/Blue Shield said she sees that **Russell Hill** has done a pretty good analysis of Blue Cross's amendments, and ACLI's too, right? **Russell Hill** responded that the Department of Justice had one in there too.

Susan Witte said she wanted to ask just one question, on how the red boxes are? What they are concerned about, is do they need to get a separate written disclosure if anything is going to go out of these red box areas? She is wondering if the second written disclosure will impact what they currently do under the definition of insurance function.

Russell Hill answered, put Blue Cross in one of these boxes. If Blue Cross is in that big yellow box in the middle and passing on information on their own policy holders, then no you don't. If Blue Cross happens to be in one of the red boxes, like up at the top of the chart, then yes. If you got information from another insurance company, this is again without permission of the individual, and then you wanted to pass that along to somebody

else, then you would. And frankly, current law prohibits you from passing that along in a lot of instances, unless you get that separate authorization.

CHAIRMAN THOMAS said he was going to use some everyday examples, if she would allow him because he is in the business to some degree. If he has a client that applies to Blue Cross for insurance, are they going to be able to inform him, under this bill, whether that client was accepted or not?

Russell Hill answered absolutely.

CHAIRMAN THOMAS asked and that is not part of the insurance function?

Russell Hill replied, yes he thought that was.

CHAIRMAN THOMAS said insurance functions are all transmittable and precluded from the law.?

Russell Hill answered, you can still make those disclosures, you bet.

SEN. GRIMES is it **SEN. FRANKLIN'S** intention or is it the Auditor's Office intention to go a step further with further legislation later to actually, to use the box analogy to come down and actually limit the transactions from the insurer?

Russell Hill replied they have had absolutely no discussion. Its never come up. What he is talking about may implicate the Rule Making. There is an intent to have the Rule Making having to do with these, nothing to go further beyond what this bill already has.

SEN. GRIMES said they will need to explore that more.

Russell Hill said yes when they get to Rule Making.

Jon Metropoulos, Farmers Insurance Group of Companies said that **Russell Hill** said that if you are an insurer, you can use the information.

Russell Hill asked if you are the insurer in the yellow box?

Jon Metropoulos said yes, and you can provide it pursuant to the right hand arrow coming out of the top to other insurance companies?

Russell Hill replied that's right, without permission.

Jon Metropoulos said his question is that it seems to him the real issue is the purpose of the information is to explore, if you are the insurer, and you provide the subsidiary the affiliate of that company in order to market a public insurance product..

Russell Hill answered that is, if you look at the yellow boxes, that is the big change. You can no longer do that under this bill for the purposes of marketing.

SEN. FRANKLIN clarified, insurance function is defined. In terms of what do you, need to do consumer service of insurance function, but without permission, if you fall outside that consumer service. You can do it with permission, but you can't do it without permission.

Russell Hill explained the insurer itself can use the information unfortunately. He doesn't like that. If there is a disclosure without permission, it can't even to an affiliate, and that is where ACLI, they are very opposed to that. They think, if it is their affiliate, they should be able to give them this information for no other reason, than they are going to market. Then understand, when they are talking about marketing its not even marketing an insurance produce that the original insurer sells. It can be anything. It can be a holding company that has 30 or 40 companies, as affiliates.

SEN. FRANKLIN said so it is true, it is kind of a philosophy decision. That is not the procedure parts of the bill, that is the conceptual part.

CHAIRMAN THOMAS asked, whose problem are they fixing there?

SEN. FRANKLIN answered, remember in the hearing, for example **Dr. Rausch, Shelby**, he and his patient got solicited, to change the medication he was prescribing, and it was done through a devise by which information was passed on that person's private records to presumable ultimately a marketer, who then had by name, that person's prescription and was able to write a letter to the patient and the doctor, and change your prescription to our product. That the kind of example that they are talking about. That is a real issue for them. She talks to people and if they find out their name and medical history is available, they kind of go, *"Oh my God!"* It is a pretty scary thing. So that is really it.

CHAIRMAN THOMAS said when we say medical history, there is a difference. That can mean that prescription, which he thinks no one else should have, or it can mean their whole records.

SEN. FRANKLIN said not to be dramatic, what she will say is components of their medical record are available whether it's a prescription. If it becomes more sensitive, that description if fairly innocuous ,this is a cold preparation, what if it is a diabetes medication, or a heart medication, or a psyche tropic drug, then it starts to get a little closer to the heart.

Susan Witte asked what if it was the pharmacy that released that information too, and not even an insurer? That might have been what was happening.

Russell Hill replied they don't reach pharmacies, and pharmacies are a big part of the problem.

SEN. FRANKLIN said they are right about that. If you are going to be a purist this doesn't necessarily get every offender, but it gets some.

Paige Dringman do any NACI models allow that marketing right now along as it's with affiliates and you are not selling your list for example to a pharmaceutical company?

Russell Hill replied that the NAIC recently in September adopted a huge new model on confidentiality. That it is his understanding, that nobody from industry likes. He didn't like it, it reaches marketing, it's 24 Pages long. If you adopt that model law, it would drastically restrict what you do for marketing. He doesn't think it completely eliminates.

Paige Dringman asked the broad question because her understanding is that the NAIC model does not prohibit marketing to affiliates.

Russell Hill replied in terms of the affiliates, maybe it doesn't, he could check on it.

Susan Witte one more question. Then she would like to go through these amendments, they could clean them up pretty fast. Just look at the definition of insurance function, in subsection 10, Page 3, Line 15. Say that Blue Cross/Blue Shield needs to transmit medical information to someone for claims administration or any of the other topics that are listed under insurance function. At the time of application or enrollment, the person signs an authorization for release of medical, it's good for like 36 months, does this bill that every time they do claims administration, or anything else that is listed in insurance function, they have to get a separate written authorization?

Russell Hill said absolutely not.

Susan Witte said that is just not clear to her, that's why she has the amendments in that she does. They are on Page 9.

SEN. GRIMES asked **Susan Witte** to repeat her question. She stated her question is, the topics that are listed under insurance function, claims administration is an example, what she is wondering, Blue Cross/Blue Shield, right now gets an authorization from an individual to release their medical records for XWZ purposes, any time they do a function that is listed in insurance function, claims administration, etc., do they need to get an additional separate written signed, dated authorization.

Russell Hill said it's even better than that. First of all, they don't have to get that separate signed authorization, even if the authorization she got expires, they can disclose it to one of these other companies, if they need to without their permission. Then you will never have to get a separate authorization, if it is an insurance function.

SEN. GRIMES said let's say you have a legitimate transfer of information and he is going to use research as an example, where you transfer some maybe genetic or birth related information to research firm, let's take Shodair Children's Hospital, then they have to release it to a National organization in order to coordinate the genetics information. Do they have to get permission then, or is that not even covered because it slips out from under the insurance?

Russell Hill replied, it's covered under current law. If they look at the red box that says researcher section 10, and then look on Page 10 of **SB 103**, starting at Line 21, that's the subsection that currently, and they make some changes, but they haven't substantially altered anything. Currently this is exactly the scenario that **SEN. GRIMES** is talking about, actuarial or research studies.
Susan Witte, the first amendment suggested is to insert additional language on insurance functions. She is reading some of **Russell Hill's** analysis fact sheet.

SEN. GRIMES asked her to explain to the Subcommittee the language they were inserting, and what the amendments were, then present her arguments.

Susan Witte read from Exhibit the first amendment that Blue Cross proposed to **SB 103.** She explained the reason they asked for the amendment to be considered, is because it is part of NAIC model, and what it does, it gives an opportunity to get in additional insurance functions, if some of those might come to

light, but they can't be allowed, unless you have the written prior approval of the commissioner. She thinks it is a reasonable amendment to expand the list if they need it.

SEN. FRANKLIN responded that it seemed to her that it would be covered under Rule Making. It's like they are adding a third function, sort of a shadow function, they have statute, they have administrative law, and this is sort of another animal.

SEN. GRIMES said his question would be is it because there may be additional things that come up because of the changes in health care, or because you are concerned about how this might be interpreted in the Rule Making process?

Susan Witte said no, she thought it was because there are additional things that might come up in insurance functions. She really thinks insurance function needs to be statutorily defined. It shouldn't be subject to Rule Making. It should be right out there, up front.

SEN. GRIMES said question for **Russell Hill**, had he intended for the Rule Making authority to further define these items under functions?

Russell Hill replied no. He didn't think that's one of the things that is laid out. He missed part of the conversation. He understood the industry wanted a definition of insurance function. What the amendment does is clearly the bill takes out marketing, the amendment allows a commissioner on a company by company basis, or industry wide basis, to stick back in marketing, at his discretion.

SEN. FRANKLIN asked **Susan Fox** about that.
Susan Fox answered that in looking under the Rule Making functions that have been added in the bill it is very clear what they are allowed to do. So she doesn't think they could expand a statutory definition by the Rule Making unless they were given the authority.

SEN. FRANKLIN said she finds it hard unless there is incredible radical deep space nine changes in the next couple bienniums in insurance industry that there would be a problem with this.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 38}

SEN. GRIMES said he thinks he understands both side of this amendment. Except he would still like to have a discussion on the uses of marketing and understand that part better in order to be able to make a decision.

Tom Ebzery commented that when **Susan Witte** put this amendment together, he doesn't think that she was intending to give the commissioner discretion to weaken or strengthen privacy on an individual basis. That was not the intent at all. He thinks that definition or the analysis certainly goes against what he read her purpose to be. He thinks there ways to say you don't like the amendment, but giving the commissioner the authority to provide company by company exceptions, to let them do these things, he doesn't think that was what her intent was.

CHAIRMAN THOMAS said if you allowed it for one, you'd be allowing it for all. He said they would go to the second amendment.

Susan Witte said the second amendment was Page 4, Line 28, Blue Cross would recommend that the language, "directly or indirectly" obtaining medical record information be stricken because it is vague. If you sneeze you get something indirectly. She doesn't know what it does, it doesn't do any thing.

SEN. FRANKLIN asked if **Russell Hill** could articulate his opinion.

Russell Hill responded that first of all this in a definition of medical record information. Understand that medical record information is a subset of personal information, with the exception of marketing, the only other place in code where this medical record information term is used is when the individual asks the insurer for access to their own healthcare information. What the amendment does, if you don't include within that definition healthcare information that insurance company got indirectly, not directly from the individual's doctor, but from another insurance company, or consumer reporting agency, whatever. They don't have to provide the individual to access to their own information because it's not technically a medical record information. That's is the only benefit of this and it's not a big amendment, but it's a loop hole in current law.

CHAIRMAN THOMAS asked a loop hole to do what?

Russell Hill answered to define out from medical record information, current law allows an insurance company to say, if we got your healthcare information from somebody besides the provider, if they got it indirectly not directly from the provider, it's not medical record information.

SEN. GRIMES said okay, this is the definition section, and he is saying the only place is that term occurs other than when somebody is asking for their own information is, in the case of

marketing. Where is that, is that somewhere in this bill, or just in the statutes?

Russell Hill said on the analysis, he explained the marketing,

SEN. GRIMES clarified he was asking where this definition is used. He assumes there are only two places it is used, one is marketing, and one is for individuals, so he is just trying to get a handle on where it is used so he can see what the impact is directly or indirectly.

Russell Hill explained the marketing is under the marketing section, which they struck, that is on Page 11, Subsection 12, Line 10. So if the bill went through it wouldn't be relevant to marketing because they get rid of marketing.

SEN. GRIMES said it would only be relevant then to individual requests.

Russell Hill replied that's right, and that doesn't appear in the bill, it's in a separate provision, which they don't amend, having to do with an insurer's right to access to their own information.

Tom Ebzery said as a lawyer he is having a tough time trying to figure out what indirectly meant, that could mean anything, there is not much definition on how you get this. He heard what **Russell Hill** said, but he thinks it is pretty clear as to what it is. The record information is information that you get from them, but when it says "directly or indirectly" it could mean all types of things.

SEN. FRANKLIN asked if she could ask for an example of what one of those ways might be.

Tom Ebzery said he is trying to think, what does indirectly mean, does that mean if somebody slipped it under the transom, he doesn't understand. "Like Harry, here's some stuff." What does it mean?

Russell Hill responded it includes all of those. If private records are within the possession of the company and somebody wants to know what the company has on them, he doesn't see a problem with making them give copies of what was slipped under the door.

SEN. GRIMES said you're saying that companies now would not give everything that have got, they may give only portions of what they have directly received, but wouldn't supply statical

information that they indirectly got. What if they didn't know that they had that indirect information in their data bank, does that make them liable for not turning that over to an individual who makes a request? **SEN. GRIMES** gave an example.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 5.1}

Russell Hill said there are two answers. First what they are talking about has nothing to do with whether they got it directly or indirectly. It's whether they know its there. His scenario applies equally if they got it directly, they just don't know if it is in their data base. Secondly, if somebody requests and you don't know it is there, and whether they can sue you, another provision that doesn't appear in this bill, these are severely limited rights of action for somebody to sue on disclosures. If they look at the end of this Chapter, there immunity, there is huge limits on liability.

SEN. FRANKLIN said that is Chapter 3319-301, 407 and 408.
SEN. GRIMES said what he is saying is that whether they have this in the statute or not, there are things that have an affect for more than this. This doesn't set up any additional liability.

SEN. FRANKLIN commented that was her understanding also as **Russell Hill** explained it to her, was that there were other in Title 3319.301 there are significant immunity provisions.

Russell Hill said the immunity is actually in Title 3319.407 and Title 3319.408.

Paige Dringman said she has a question that says medical record information means personal information, you go to personal information, is says, "any individually identifiable information gathered in connection with an insurance transaction." So they are contemplating something that is not gathered in connection with an insurance transaction? They are going to have some information that they are calling "indirect", but they did not obtain in connection with an insurance transaction, would obligate them whether you have this direct or indirect in there to turn over anything they obtained in connection with an insurance transaction, wouldn't it? Because this reference is personal information and personal information is broad enough to include that category.

Russell Hill said he wasn't following.

SEN. FRANKLIN said she is trying to clarify "personal information" like date of birth.

Paige Dringman said personal information is identified. Its huge, but medical record information, means personal information. Medical record information means, any individually identifiable gathered in connection with an insurance transaction, that relates to an individual's physical or mental condition, etc. So her questions is what is there that they are contemplating their "directly or indirectly" is going to give them that is not information gathered in connection with an insurance transaction?

{Tape : 1; Side : B; Approx. Time Counter : 0 - 8.2}

Russell Hill replied it only has to do with the individual's right of access which doesn't appear in this bill. That is the only time, aside from marketing that is the only time this term is only relevant.

SEN. GRIMES at the expense of taking more time, he wants to make sure, if the language on Page 11 wasn't stricken that refers to marketing, then the addition of the word "indirect" would have enormous impact on what could be used for marketing and what isn't. Right now about the only thing that can be used for marketing then, indirect information, since no personal record information can be used. Does he understand that correctly?

Russell Hill said he thought it would have a bigger impact, but understand in Subsection 12, that medical record information, is not all medical record information. It's that, that relates to an individuals character, personal habits, mode of living, or general reputation. Now that's a different definition, than personal information. It could still include healthcare information.

CHAIRMAN THOMAS said go to amendment number three.

Susan Witte said amendment #3 is Page 8, Line 17. She said she was reading **Russell Hill's** comments back on this amendment too. What this sets up, is you have this authorization, the authorization has to say all this stuff on it and that's fine, but it also puts in- "the authorization says the record of any subsequent disclosures. All they were trying to say, was the authorization say, you can request a copy of that if you want, you may request a copy of that record, rather than just list it out, because that is what she thought it meant. It's not a big deal though.

SEN. FRANKLIN said she wasn't sure of what the rationale was, she wrote a note to herself. If you change it to may request, it probably leaves it open, so you can request it, but they don't have to give it.

Russell Hill suggested may be just upon request.

SEN. FRANKLIN said maybe they could have it say upon request.

CHAIRMAN THOMAS said they were on Amendment #4.

SEN. GRIMES said he has some questions on this portion of the bill, but he will just come back to it later, go through all the amendments first.

Jon Metropoulos said on this section of the bill he asked if the amendments go to this, so he should interject.
{Tape : 1; Side : B; Approx. Time Counter : 0 - 11.5}

Russell Hill asked if he has his draft, as he understood **SEN. GRIMES** that this was one of his concerns. If they would look at his draft on Page 13. Nobody has an amendment, but he thinks what they talked about works. If he would like to add, there is no intention to reach litigation or anticipated litigation, and if he wants to make that perfectly clear he can take the language, and it appears right at the top of Page 14 that appears in other sections of this information and privacy act. They could take that language and tack it on to subsection 8. He understood that is what **Jon Metropoulos** was recommending.

Jon Metropoulos replied yes.

Russell Hill stated he has no problem with that.

CHAIRMAN THOMAS said they will go back to **Susan Witte's** amendment number 4.

Susan Witte said actually Amendment #4, 5, and 6, may be taken care of **Russell Hill** telling them that they don't have to go out and get that secondary written dated disclosure. Amendments #4, 5, and 6, she will just go with the first one which is Page 9, Line 9, of the bill, it talks about disclosure. They would ask that the language limited to that which is be stricken. Blue Cross's Amendments #4, #5, and #6, may not be necessary, if what **Russell Hill** is telling them, that they don't have to get second written disclosure to do insurance function. They might not need these amendments.

CHAIRMAN THOMAS clarified they were on Amendment #5, of **Russell Hill's** draft.

SEN. FRANKLIN said if you are working off of **Russell Hill's** draft it is Amendment #5, Page 9, Line 9.

Susan Witte said she was not sure how you would define, you can make disclosure, but disclosure is limited to that which is reasonably necessary for all these folks to do XYZ that is contemplated on Page 9, under subsection 3. She doesn't know who makes that determination as to limited to that which is reasonably necessary. She doesn't understand the language, or why it is in there, but she doesn't have heartburn about it either, because Amendments #4, #5, and #6, on Page 3, don't apply to Blue Cross.
{Tape : 1; Side : B; Approx. Time Counter : 11.5 - 14.9}

SEN. FRANKLIN said truthfully she doesn't know that it makes a great deal of difference. They could leave out limited disclosure which is reasonably necessary, correct?

Russell Hill said this again, this language appears elsewhere in the code. He is not sure there is a difference between saying disclosure is reasonably necessary versus disclosure is limited to that which is reasonably necessary.

Susan Witte said Blue Cross withdraws its Amendment #4 in the spirit of getting out of the meeting. They will go to the next one, which again this may be taken care of, Page 9, Line 19.

Tom Ebzery asked if there was any language that **Russell Hill** might be able to supply that would make them feel better and then they could move right on by these just as fast as they could go.

Russell Hill clarified, about reasonably necessary?

Tom Ebzery answered about the second written authorization. Something that would make their principals feel very comfortable and which echos what he told them, if he can do that for them?

Russell Hill replied if what they need is further clarification that this guy doesn't need separate written authorization and these people do.

Tom Ebzery asked him if he wanted to prepare some language to that affect and maybe present it to the Committee? **Russell Hill** answered yes.

Susan Witte said he might also want to write separate written authorization as a definition and then you would write separate authorization does not apply to insurance function defined in (10) and they will get out of the meeting. Almost, she has one other quick amendment on Rule Making. This is the last amendment, it's on Page 12, Line 14. The Insurance Commissioner

proposes to put record keeping requirements establish them by rule, **Bill Jensen** has heartburn about this.

{Tape : 1; Side : B; Approx. Time Counter : 14.9 - 17.4}

SEN. FRANKLIN asked what does he have heartburn about? **Susan Witte** answered that record keeping requirements should not be by Rule.

Russell Hill stated that ACLI felt very strongly about this too, and it was based on their assumption that 3 year Rule Making requirement that occurs, that they see there where they have added on Page 8, Lines 17 to Line 21, applies to all disclosures. That's not how the Department of Insurance understood this, but if ACLI and Blue Cross are comfortable, with again clarifying that this record keeping requirement applies not only to disclosures within the scope of a permission that the individual gave, but to those disclosures that they made, without permission, then the Rule Making really isn't necessary. They had distinguished between those two. So that the commissioner couldn't come in and fine tune how a company kept records, if it was disclosing, pursuant to the permission of the individual. But he could come in and say, because he needs to know that in an investigation and the individuals need to know that. Say how you are going to keep a record, if you are disclosing without permission, now the first covers the second. There is no need for Rule Making in that regard.

SEN. FRANKLIN said potentially they could clarify on Page 8, the disclosure, and then they don't need rule making. **Russell Hill** replied if he understands their concern correctly and that satisfies it.

SEN. FRANKLIN said maybe that is what they need to do. So clarify the disclosure issue on Page 8, and eliminate rule making. **Russell Hill** said he'd be curious in asking if other companies or interests don't like that?

SEN. FRANKLIN asked ACLI if they are comfortable with that?

Jon Metropoulis answered they would take a look at it. It sounds improved, let him see what the language will look like.
Susan Witte said she has two more things. There are a whole bunch of privacy issues coming down the pike. She doesn't know what they are. She is hoping it doesn't preempt this, they are going to know by summer time. Secondly, she said in testimony, Blue Cross doesn't hand out anybody's medical records. In fact they fire people for talking about it. With that in mind, she's happy.

Susan Fox clarified they really didn't approve any amendments, right?

CHAIRMAN THOMAS confirmed that was correct.

SEN. FRANKLIN said so they have to meet again.

CHAIRMAN THOMAS clarified yes. He understands that **Russell Hill** is going to meet with **Tom and Jon** and work up an amendment. He will work with them, and **Paige,** etc., and then **Susan Fox** has her notes on what they kind of agreed to. Let the parties work out the language and they can work with **SEN. FRANKLIN** and then they can schedule something next week.

SEN. GRIMES said something that he was going to throw out. It is starting to become confusing as they go through this, and that's whether or not its always clear who first has the information. And when it becomes secondary and third. It seems like in some cases you might have two or three people have the information at the same time, to share that information might end up being.... there might be a legitimate way, Two of these entities may share the information back and forth more than once or twice and not need the disclosure just because of the way that the information was gained. Just a question, he will leave it out there.

Russell Hill asked if he should wait on responding to that? One thing that he never pointed out, this insurer can give to two or more of these other red boxes. So as long as this insurer gets the information, they can give at different times to multiple red boxes and if these people get the information from this insurer at different times, he doesn't think that makes a difference on what they do with the information. He asked if he was missing the question?

SEN. GRIMES said that answered it somewhat, but he will take it up with him later.

Closing by the Sponsor:

SEN. FRANKLIN said thank you very much. It just has been a long time since she has had an insurance work session. For the record she feels a little protective of **Russell Hill** since he has worked hard on this bill, and she understands with the flow of things, and **Paige Dringman** is new, she just got hired yesterday, there's pieces people weren't privy to, but this bill has been out there for many months. And it doesn't preclude the fact that they shouldn't come to the table and talk about it and the Committee

is clear on it, but just for the record, it wasn't like it was sprung on people.

Tom Ebzery answered **SEN. FRANKLIN** that is true, but there has been several versions, Godzilla 1, we're not going to have this one, but secondly, he knows that she wants to be protective of **Russell Hill**, but he's been dealing with **Russ** for six and eight years, he doesn't need ... he needs no protection.....he is perfectly capable of handling the hard issues very well, he's a pretty tough guy.

SEN. FRANKLIN said, but the bill has been out there, that's the point. It has.

CHAIRMAN THOMAS said, thank you for that point and they stand adjourned.

{Tape : 1; Side : B; Approx. Time Counter : 17.4 - 30}

SB 103 and Private Medical Records

SENATE HEALTH & WELFARE
EXHIBIT NO. one (1)
DATE Jan 22, 1997
BILL NO. SB 103

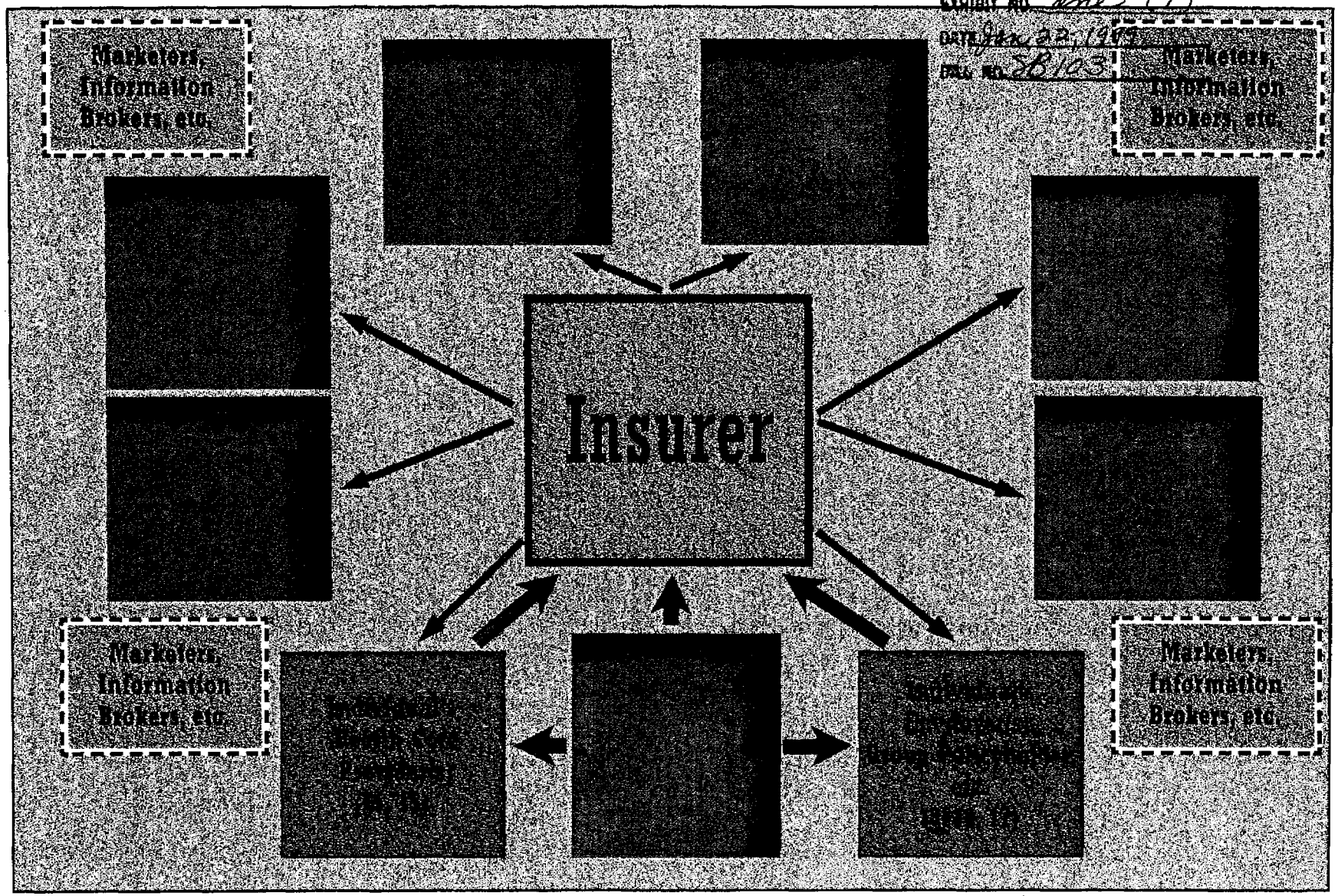

Exhibit # 2
From 1/22/99
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201 14 pages
Helena, MT 59602-1201
Phone: (406) 444-4775

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE January 22, 1999
BILL NO. SB103

ANALYSIS OF PROPOSED AMENDMENTS

Prepared by Montana Department of Insurance

(Page and line numbers refer to introduced version of bill)

1. Page 3, line 19 [*requested by Blue Cross Blue Shield Montana*].
Following: "functions."
Insert: "Additional insurance fuctions may be allowed with the prior written approval of the commissioner; however, the protected health information shall not be used or disclosed for any purpose other than in the performance of an insurance function."

Analysis: This amendment would give a commissioner discretion to weaken or obliterate (but not strengthen) privacy protections contained in both SB 103 and current law on a company-by-company or industry-wide basis, without even the necessity of rulemaking or notice to the unsuspecting individuals whose private health care information would be disclosed. For example, this amendment would give a commissioner discretion to allow a single company or the entire industry to sell private health care information to an unaffiliated drug manufacturer for marketing its own brand of prescription medicines to targeted patients and their health care providers--precisely the type of abuse SB 103 seeks to prevent. Blue Cross Blue Shield Montana should explain why it favors such unfettered potential to relax privacy protections beyond the scope of an individual's permission, yet repeatedly and selectively opposes--because of supposedly vague language--the pro-consumer provisions of SB 103 which limit disclosures of private health care information without permission to "that which is reasonably necessary."

2. Page 4, line 23 [*requested by Blue Cross Blue Shield Montana*].
Following: "obtained"
Delete: ", directly or indirectly,"

Analysis: This cryptic amendment preserves a loophole in current law which lets insurance companies, while disclosing private health care information to virtually anyone else, nevertheless keep secret *from the individual* whatever medical record information about him/her they obtained "indirectly" through the secondary disclosures which SB 103 would control. In fact, the term "medical record information" is only used in Montana's Insurance Information and Privacy Protection Act to (1) grant individuals access to their own medical records and (2) restrict secondary disclosures of those medical records for marketing purposes.

For example, Sec. 33-19-301(3) purports to give individuals the right to obtain "medical record information" about themselves from an insurance company in order to correct, supplement, or delete it. But currently an insurance company which obtains the

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE January 22, 1999
BILL NO. SB103

Amendment to Senate Bill 103

Introduced Copy

Requested by the Department of Public Health and Human Services

For the Senate Public Health Welfare and Safety Committee

Prepared by John C. Koch, DPHHS Staff Attorney

January 22, 1999

1. Title, line 13
Following: "ORGANIZATION;"
Insert: "AND PROVIDING AN EXEMPTION FOR PROGRAMS ADMINISTERED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES UNDER TITLE 53;"

2. Page 3, line 26.
Following: "33-30-311."
Insert: Insurance producer does not include health maintenance organizations, managed care organizations or other programs administered by the Department of Public Health and Human Services under Title 53.

3. Page 7, line 14.
Following: "behalf."
Insert: [Sections 1, 2 and 3] do not include health maintenance organizations, managed care organizations or other programs administered by the Department of Public Health and Human Services under Title 53.

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE January 22, 1999
BILL NO. SB 103

Tom Ellery

ADDITIONAL AMENDMENTS TO SB 103 SUBMITTED BY YELLOWSTONE COMMUNITY HEALTH PLAN

1. Page 12
   Following line 18
   Add: NEW SECTION. Section 5. Effective date. [This act} is effective on January 1, 2000.

ROLL CALL

Subcommittee on SB 103

SENATE COMMITTEE Public Health Welfare and Safety DATE January 22, 1999

NAME	PRESENT	ABSENT	EXCUSED
Senator Franklin	✓		
Senator Grimes, VC	✓		
Senator Thomas, Chair	✓		

Attach to each day's minutes

ROLLCALL.F08

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

SUB COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SB 103

Call to Order: By **VICE CHAIRMAN FRED THOMAS**, on February 1, 1999 at 10:30 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Eve Franklin (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Subcommittee meeting & Date(s) Posted: SB 103, 1/28/1999
Executive Action:

SUB COMMITTEE MEETING ON SB 103

Informational: **Russell Hill, Legal Counsel, Auditor's Office**
Jon Metropoulos, Farmers Insurance Group
Mark Baker, American Council of Life Insurance
Susan Witte, Blue Cross/Blue Shield

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order and said that **SEN. GRIMES** was presenting a bill in Senate Judiciary Committee, and he asked **Chairman Thomas** to vote on his behalf.

He said that **Russell Hill** did what they asked him to do, he has given them the form in essence a Grey Bill. This is from him

Russell Hill, State Auditor's Office, not to be confused with the official Grey bill from the Legislative Services Division, but the same thing.

EXHIBIT(phs25b01)

He asked **Russell Hill, Chief Legal Counsel, State Auditor's Office** to start by explaining and walking them through the Grey copy of **SB 103.**

Russell Hill said actually amendments were coming in still this morning. He thinks he has them plugged in and may have plugged in more than the committee intended.

Russell Hill then walked through the amendments, various options and who presented them in conjunction with the Grey Bill.

Discussion:
{Tape : 1; Side : A; Approx. Time Counter : 0 - 4}

CHAIRMAN THOMAS said to **SEN. FRANKLIN** he would entertain a motion to remove the language starting with "additional going through function" from the Grey Bill.

Motion: SEN. FRANKLIN MOVED THAT THE LANGUAGE DISCUSSED AND EXPLAINED BY CHAIRMAN THOMAS BE REMOVED FROM THE GREY BILL.

Vote: With SEN. GRIMES voting "yes" by proxy, **the motion carried -3-0.**

Russell Hill continued to explain the amendments, definitions, various options and who presented them in conjunction with the Grey Bill.

{Tape : 1; Side : A; Approx. Time Counter : 4 - 7}

Russell Hill said they were on Page 5. This is one of the amendments offered by the Auditor's Office to clarify that the insurance company who originally gets the healthcare information from the doctor. This gives all the interested parties a comfort level.

He explained Page 7 and the top of Page 8. There at subsection (3) on Page 7 and Page 8.

CHAIRMAN THOMAS clarified the language in the Grey Bill is on Page 7 and the bill itself is on Page 8, if they want follow both.

Russell Hill continued with his explanation and understanding of how the amendments would work.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 8.4 - 10.6}

CHAIRMAN THOMAS and **SEN. FRANKLIN agreed to accept 9(a), but not 9(b)**
CHAIRMAN THOMAS continued to explain that they would accept the first amendment in subsection 8, where it refers to the subsection 9. He asked about the term "upon request"?

{Tape : 1; Side : A; Approx. Time Counter : 10.6 - 11.3}

Russell Hill explained that was essentially a recommendation by Blue Cross which clarifies the intent, that the company doesn't have to just compile those even if nobody requests them.

CHAIRMAN THOMAS said so that is okay, and **SEN. FRANKLIN** agreed.

CHAIRMAN THOMAS said the next one on privileged information pursuant to subsection 2 through 17 of 306.

Russell Hill continued to explain. This goes hand in hand when they get to the end of the bill with the deletion of rule making authority having to do with record keeping requirements. This is to clarify the three year record keeping requirement that applies both disclosures with permission of an individual and disclosures that they didn't have permission for, but are authorized by those subsections. And the Department doesn't mind taking out the Commissioner's rule making authority as long as its clear that the whole group of disclosures is subject to the record keeping requirement. He thinks this is satisfactory to ACLI and to most of the industry folks as a way to get rid of that rule making authority.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 11.3 - 12.9}

CHAIRMAN THOMAS asked on that same Page 8(a), during the preceding three years, that is some of the same language?

Russell Hill said yes, that is some of the language that the Auditor's Office had proposed.

Discussion:
Most comments from those attending the meeting thought they should leave this language in there.

CHAIRMAN THOMAS asked about Page 8.

Russell Hill commented this was one of the items that he wasn't sure about. But explained the record keeping language.

{Tape : 1; Side : A; Approx. Time Counter : 12.9 - 16}

CHAIRMAN THOMAS said if it used within the insurance function, that is not the intent of the bill is to stop this use of information within the use of practicing insurance functions. He clarified further, the intent of the bill is not to stop this information from flowing within the use of insurance functions. He (**Russell Hill**) is just saying this stops them from having to track the use of it?

Russell Hill said this amendment would, first of all not let them have to track, so you have a disclosure on the authorizations of the three years. Yet in virtually all instances the person can't track it for three years. This requires them not even to track disclosures for an insurance function that don't have the permission of the individual and that aren't authorized by one of those 16, or 15 subsections.

Discussion:
Russell Hill stated it is the Department's intent that they could just be able to tell somebody they looked at the record, and what they looked at. It not all is meant to require them on an on going basis maintain a separate record. He asked what language would work besides the record?

{Tape : 1; Side : A; Approx. Time Counter : 16 - 20.4}

Susan Fox said to change it to "a record". **Chairman Thomas** agreed saying change "the" to "a".

Motion: SEN. FRANKLIN MOVED THE AMENDMENT TO STRIKE "THE" AND INSERT "A".

Discussion:

Mark Baker wanted to check with ACLI and his association about the other language "upon request.

SEN. FRANKLIN asked how long would that take.

Mark Baker said he could make a phone call. **SEN. FRANKLIN** said they wanted to report to the Public Health Standing Committee today.
{Tape : 1; Side : A; Approx. Time Counter : 20.4 - 26.2}

CHAIRMAN THOMAS said if he could get an answer today and they could make it a part of their report.

Discussion:
Russell Hill continued to move through the bill explaining the amendment, definitions and thrust of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 26.2 - 35; Comments : Balance of tape is poor quality, defective, and wording is garbled.}

{Tape : 2; Side : A; Approx. Time Counter : 0.3}
Russell Hill explained that the companies can disclose your financial information, lots of private information that's not health care. He agrees that is not the thrust of the bill, but this would expressly allow that. They can disclose it.**EXHIBIT(2)**

They passed out those affiliate, those organizational charts, they can disclose it throughout their entire system, so that even if you just say we are disclosing it for insurance, if he buys health insurance all of a sudden, a company can start pitching him on auto insurance, work compensation, annuities, any kind of financial products that really have nothing to do with his original purchase of the health insurance. So that's a real broad loop hole that you are still adding there. And the definitions of products and services, what's an insurance product or an insurance services is not defined in the bill so it is a little narrower than current law in terms of marketing for insurance purposes. But it is still hugely broad, he doesn't know if that add anything to the discussion.

Paige Dringman said HIAA would also support this language, but they offer a further protection measure, by using some language from the NAIC model that says with respect to the marketing of insurance products, the individual shall be given an opportunity to indicate that he or she does not want this information used for marketing purposes. So that would give them a way to say, don't use it. And maybe that would address a little bit of **Russ Hill's** concerns.

Susan Fox asked, just so she is clear, they have the existing language 12, which had some of this in it, but is now stricken. They have a new proposal 12A, or 12B, or what used to be subsection 13 and is now 12, because she sees the same language

popping up in both 12's now, and she just wants to be clear that is basically the options they are looking at.

CHAIRMAN THOMAS clarified that 12A and 12B are one.

Susan Fox asked further, but then there is the second set, right? The language that **Paige Dringman** was actually in stricken #12?

Paige Dringman answered you have re-insert that language that was stricken out on 12B. **Susan Fox** said thank you.

SEN. FRANKLIN said if you go to the bill the usual language, they are really kind of broadening the issue because we are now allowing certain privileged information. To her mind, some of the spirit of this, a person who sees himself as a patient, is involved with an insurance company with the sense they are health care entity and then they bear their sole and provide some privileged information which then this financial institution which is also a healthcare entity an insurance company, then can use for a variety of other financial purposes. The issue is more, what is the core of the issue and the core is, is there a betrayal of citizen trust when they share privileged information to an insurance company who says they are concerned about the best interest of the patient, and then that privileged information and use it in a way that the person may not want used.

She thinks this language, although it is more elegant, broadens, in a way gives sort of a pro-actively, pro-actively gives them more opportunity than before in certain ways. She is concerned about that and she thinks that gets to the heart of it. It's narrower than the broadest opening, but it flies in the face of what the intent of this is, really to say, you don't betray the trust of a person who has shared private information who then gives it to the insurer. That is her bottom line.

CHAIRMAN THOMAS said of course it has to do with medical records from what he got out of it was the tenor, names and addresses is somewhat different.

SEN. FRANKLIN said names and addresses are some what different, but what about financial status, or family relationships.

CHAIRMAN THOMAS said with the intent of her bill to protect private medical records and keep them that a way, in writing and crafting a document that does that you have the ability to spill over and do unintended consequences. That is what people keep coming back and saying, don't tighten it here and don't tighten is there. He thinks that is what this amendment is really about.

Because it is trying to alleviate unintended consequences. It's kind of like the information he gets from his bank, or his mortgage company, and others. He always get solicitations for life insurance which kind of irrate him, but yet there are using his name and address as a client of there's, and its not a big deal, he promptly throws them away. It is a form of junk mail. In his case if he wanted to do that with clients he could mail them a broad base solicitation too, but he is not using their medical records.

SEN. FRANKLIN said the issue to her goes beyond. To her mind it is more than junk mail. The issue is an insurance institution who's primary concern is healthcare and healthcare management then has some privilege information that they might not share with financial institution and then they can use it to market. It is better if medical information is not included. Then what's non-medical information, family members, death of spouses, marital status, so they are going beyond even junk mail, it goes to who else has your personal and medical information. So there still is personal information.

CHAIRMAN THOMAS answered he is used to the term junk mail as his evaluation of some solicitations. He asked **Susan Fox** about their options, one options is 12A and B, and the second option is the language in the middle of 12 as the bill provides, the old section 13, and that's most of the language in there, starting with "or".

Russell Hill said the first "or" before that deleted language in the new subsection 12 was Farmers' Insurance alternative option. The language starting with "or" after the deleted language, was ACLI's (American Council of Life Insurance) suggestion. They operate a little bit differently, again the Committee really has three alternatives.

CHAIRMAN THOMAS clarified they have the first "or" and second "or" are numbers option 2 and 3, or you have 12A and 12B at the top.

Paige Dringman said if they go with one of those and they wanted to address some of the concerns raised by **Russell Hill** and **SEN. FRANKLIN** they would re-insert some of the language from the old #12 that protected the individual or gave the individual an out by saying he doesn't want it marketed.

Russell Hill said what they are talking about here are those instances when a company can disclose without the individuals permission. He is not sure how giving them an opportunity to indicate he doesn't want personal information disclosed for

use for a variety of other financial purposes. The issue is more, what is the core of the issue and the core is, is there a betrayal of citizen trust when they share privileged information to an insurance company who says they are concerned about the best interest of the patient, and then that privileged information and use it in a way that the person may not want used.

She thinks this language, although it is more elegant, broadens, in a way gives sort of a pro-actively, pro-actively gives them more opportunity than before in certain ways. She is concerned about that and she thinks that gets to the heart of it. It's narrower than the broadest opening, but it flies in the face of what the intent of this is, really to say, you don't betray the trust of a person who has shared private information who then gives it to the insurer. That is her bottom line.

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Russell Hill said what they are talking about here are those instances when a company can disclose without the individuals permission. He is not sure how giving them an opportunity to indicate he doesn't want personal information disclosed for marketing purposes, he is not sure how that fits in with the disclosure that's without their permission. They have already allowed clearly the blanket authorization to disclose. What **Paige Dringman** is suggesting is a blanket authorization and you essentially have to take an affirmative act to prevent marketing. It seems to him in real life as opposed to conceptually that means everybody is going to give permission for marketing whether they really know it or mean to or not.

CHAIRMAN THOMAS indicated to **SEN. GRIMES** that they were on Page 10 and their options are to adopt the Amendment of 12A and 12B, or their second option is the new 12, starting with the first "or" for the marketing of an insurance or finance product or services. That's option number two. The third option, starts with the next "or" disclosure of limited to which reasonably necessary, etc. So those are the three options. He thought they should include one of those here, **SEN. FRANKLIN**, and he seems to favor 12A and 12B.

CHAIRMAN THOMAS asked **SEN. FRANKLIN** if the could briefly revert back to Page 8, and revisit #C, they will not include that, okay then C is done.

Russell Hill asked if he could at least float the possibility that if the Subcommittee is looking at adopting 12A and 12B, that they at least delete the language,"or financial product so the they not in respect broader than current law.

CHAIRMAN THOMAS asked does current law prohibit them from doing that?

SEN. FRANKLIN said it doesn't expressly state it, she doesn't know if it prohibits.

Jon Metropoulos, said he doesn't believe at this point, without enacting this bill or something similar to it, that they are prohibited. In fact the ability to market is much broader, so he's wanted to jump in here and say this is actually not broadening the scope at all of current law. It's reducing it quite a bit to specific information non-medical record information for specific purposes, insurance and financial products. So even under this a pharmaceutical companies couldn't call you up. He had proposed amendments.

EXHIBIT(phs25b03)

Susan Fox said some of this has to do with changes in federal law over the past couple of years, but there used to be fire walls between the insurance industry and the banking industry, and some of that has changed evolved as technologically has. So some of it, she doesn't disagree with **Jon Metropoulos** said, but she wants to say that it's not only at the state level, but these changes have happened, but it is at the federal level that things have allow more of the dovetailing of the two industries into basically a single industry.

Russell Hill said to **Jon Metropoulos**, he agrees with him that subsection 12, that they are knocking out is hugely broad, but at least the old 13, the new subsection 12 limited that to marketing of an insurance product or service. That's where they were focusing on. Financial products would be an expansion of that, correct.

Jon Metropoulos responded saying he doesn't have his bill handy, but as he read the old 12, that allowed disclosure to any person, that was the problem there, but it didn't contain that constricted if you will, to using it for insurance products. He thought the old 13 had that.

Russell Hill said the way he is saying it is, 12 completely swallowed the old 13, right, is there a difference?

Jon Metropoulos said he didn't know what the practice was, but he assumes it did, yes and that is why they are trying to get rid of 12. **Russell Hill** answered yes.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8; Comments : Subcommittee stood at ease for several minutes.}

Russell Hill asked if this is the one that if they adopted those back on 12A and 12B, this becomes really unnecessary, or not?

CHAIRMAN THOMAS answered if 12B and 12B goes in this is unnecessary. **Russell Hill** commented this was kind of an alternative approach.

CHAIRMAN THOMAS said they will revert to Page 10, 12A and 12B, **SEN. GRIMES's** has a motion.

Motion: SEN. GRIMES MOVED SB 103 GRAY BILL, PAGE 10, 12(a) AND 12(b) BE ADOPTED.

CHAIRMAN THOMAS clarified in that motion they would be stating that they do not include the language on Page 3" "INTRA-INSURANCE INSTITUTION MARKETING, INTRA-AFFILIATE MARKETING, and thirdly that they include those expanded definitions in Section 1 18). That they expand the "medical record information" to include "medical claims history".

Discussion:

About the language "medical claims history" versus "medical history"

SEN. FRANKLIN reiterated the three part amendment being "medical claims history", 12(a) and 12(b), and allowing the language on Page 3.

SEN. FRANKLIN said for the record she can live with "medical claims history". She has already made her statement about putting the intra-institutional marketing, although she would agree with that as an issue. It's messy law, but she will have to resist 12(a) and 12(b).

Vote: SEN. GRIMES' motion to amend SB 103 Gray Bill, Page 10, 12(a) and 12(b) and other clarifying language was adopted. With SEN. FRANKLIN voting "no", **the motion carried -3-0.**

Susan Fox clarified if they accept 12(a) and 12(b) then on Page 10, the new subsection 12 that was supposed to replace the old subsection 13 in unnecessary. Both the language that is existing in the bill, plus the Farmers and the ACLI, because it has been reiterated in 12(a).

CHAIRMAN THOMAS confirmed that is correct. They are not going to in Section 12, as it is listed there, in **SB 103 Gray Bill**, they would not do any three of those amendments.

Susan Fox said they don't even need existing language any longer, correct? Because it is using that affiliate who's only information will be in connection with an audit, so basically it has been reiterated in 12(a).

Russell Hill said he doesn't see the difference between 12(a) and 12(b) and what's the new 12.

CHAIRMAN THOMAS said he would entertain a motion to strike Section 12, starting with "disclosure" through "persons." Without objection that will be their report.

CHAIRMAN THOMAS said they will be on Page 4.

Russell Hill said what this means now because "non-medical record information" has become the lynch pin of what they did on Page 10, with 12(a) and 12(b) for marketing, under the current definition of medical information, its only information that's obtained under subsection (b), from a medical professional or medical care institution from the individual or from the individual's spouse, parent or legal guardian.

Frankly he is deathly afraid of the argument that if they got it from another company, if they got it through any of these indirect disclosure doesn't come strictly within this definition. That's the only intention of putting in directly or indirectly. If they are afraid of the term indirectly, then maybe they say is obtained, "is obtained from a medical profession."

Discussion:

CHAIRMAN THOMAS indicated they were just clarifying that "medical record information" means these definitions they have stated and

is obtained "directly or indirectly" defined down to individual or individual spouse, or legal guardian.

SEN. FRANKLIN said she is trying to review her options. She worked hard on this bill, this is one of the better sessions in working through a bill, one of the better processes they have had. She wanted to thank **Chairman Thomas** and committee members for that. She is inclined to move a do not pass on the amendments or else a minority report, which ever is acceptable to the Committee. If they like the bill the way it is and want to report it out. She doesn't know how they want to proceed.

SEN. GRIMES said they had a few of those on the House side, and it seemed like it did work fairly well to have a Minority Report because then the full committee really makes the decision, so you have both sides represented. They have narrowed it down between the bill and the Gray Bill, whether they have it in time to go to the committee, he thinks it has come down to one or two issues. So with that he would move an alternate motion that SB 103 Do Pass.

CHAIRMAN THOMAS said to **Susan Fox**, if **SEN. GRIMES'** motion passes he would ask that she work with **SEN. FRANKLIN** on the element that she has discussed.

Vote: **SEN. GRIMES' MOTION THAT SB 103 RECEIVE A DO PASS AS AMENDED RECOMMENDATION FROM THIS SUBCOMMITTEE**, with **SEN. GRIMES** and **SEN. THOMAS** voting **"yes"**, **the motion carried -2-0**.

Russell Hill said there was one amendment that was from the Department of Public Health and Human Services that **Susan Fox** drafted.

Susan Fox clarified it helps with managed care. She explained right now there is language in the bill, back in the disclosure section, regarding governmental disclosure that is limited to that which is reasonably necessary may be made to governmental authority. This amendment would strike the language requiring, it is kind of similar to the Department of Justice concern. So take out the language requiring the individual separate written authorization, but then it also states that, "the only purposes that it can be done for are determining the individuals eligibility for health benefits, or as required by federal or state law, DPHHS because it is a Medicaid program and it is required that they report certain information to the federal agencies.

CHAIRMAN THOMAS said they will adopt that amendment in the Subcommittee Report.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 32}

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. DUANE GRIMES, Vice Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT(phs25bad)

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE February 1, 1999
BILL NO. SB 103

SB 103 GRAY BILL
Requested by Senate Public Health Subcommittee
Prepared by Montana Department of Insurance

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 103

INTRODUCED BY FRANKLIN E

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; CLARIFYING THE DEFINITION OF INSURANCE FUNCTION AND MEDICAL RECORD INFORMATION; REQUIRING CONSENT BEFORE AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION COLLECTS PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL; RESTRICTING UNAUTHORIZED DISCLOSURE OF PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; PROVIDING INDIVIDUALS ACCESS TO RECORDS OF UNAUTHORIZED DISCLOSURE OF THEIR PERSONAL OR PRIVILEGED INFORMATION BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; AND AMENDING SECTIONS 33-19-104, 33-19-202, 33-19-204, AND 33-19-306, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-19-104, MCA, is amended to read:

"33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or

certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, INTRA-INSURANCE INSTITUTION MARKETING, INTRA-AFFILIATE MARKETING, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, grievance procedures, and internal administration of compliance and policyholder service functions. ADDITIONAL INSURANCE FUNCTIONS MAY BE ALLOWED WITH THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER; HOWEVER, THE PROTECTED HEALTH INFORMATION SHALL NOT BE USED OR DISCLOSED FOR ANY PURPOSE OTHER THAN IN THE PERFORMANCE OF AN INSURANCE FUNCTION.

~~(10)~~(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

~~(11)~~(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

~~(12)~~(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or

insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

~~(13)~~(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

~~(14)~~(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

~~(15)~~(16) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

~~(16)~~ (17) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

~~(17)~~ (18) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained, directly or indirectly, from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

~~(18)~~(19) "Person" means a natural person, corporation, association, partnership, or other legal entity.

~~(19)~~(20) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

~~(20)~~(21) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

~~(21)~~(22) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

~~(22)~~(23) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

~~(23)~~(24) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(25)(a) "SEPARATE, WRITTEN AUTHORIZATION" MEANS AN INDIVIDUAL'S WRITTEN AUTHORIZATION:

(i) GIVEN TO THE RECIPIENT OF PERSONAL OR PRIVILEGED INFORMATION WHICH HAS BEEN DISCLOSED PURSUANT TO SUBSECTIONS (3) THROUGH (17) OF 33-19-306; AND

(ii) SEPARATE FROM ANY WRITTEN AUTHORIZATION OBTAINED BY THE DISCLOSING INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION PURSUANT TO 33-19-204.

(b) "SEPARATE, WRITTEN AUTHORIZATION" DOES NOT INCLUDE THE INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION WHICH DISCLOSES PERSONAL OR PRIVILEGED INFORMATION PURSUANT TO SUBSECTIONS (3) THROUGH (17) OF 33-19-306.

~~(24)~~(26) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

~~(25)~~(27) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 2. Section 33-19-202, MCA, is amended to read:

"33-19-202. Notice of insurance information practices. (1) An insurance institution or insurance producer shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice ~~shall~~ must be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice ~~shall~~ must be provided no later than the policy renewal date, except that ~~no~~ notice is not required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice ~~shall~~ must be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that ~~no~~ notice is not required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect ~~such~~ the information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), ~~(13)~~, and ~~(15)~~ (14) of 33-19-306 and the circumstances under which ~~such~~ the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) ~~such~~ the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf."

Section 3. Section 33-19-204, MCA, is amended to read:

"**33-19-204. Content, use, and disclosure of authorization forms.** Notwithstanding any other provision of law of this state, an insurance institution, insurance producer, or insurance-support organization may not ~~utilize as its disclosure authorization form~~ collect personal or privileged information about an individual in connection with insurance transactions except in conformance with a form or statement that authorizes the disclosure of personal or privileged information about ~~an~~ the individual to the insurance institution, insurance producer, or insurance-support organization ~~unless~~ and the form or statement:

(1) is written in plain language;

(2) is dated and signed by the individual or a person authorized to act on behalf of the individual;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance producer and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time ~~such~~ that the authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that, SUBJECT TO THE EXCEPTION PROVIDED IN SUBSECTION (9) OF THIS SECTION, the individual or the individual's authorized representative is entitled to receive a copy of the authorization form and, UPON REQUEST, the record of any subsequent disclosures of personal or privileged information PURSUANT TO SUBSECTIONS (2) THROUGH (17) OF 33-19-306 that must include:

(a) the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information during the preceding 3 years;

(b) the date of the receipt or examination; and

(c) to the extent practicable, a description of the information disclosed."

(9A) THE PROVISIONS OF SUBSECTION (8) DO NOT REQUIRE DISCLOSURE TO THE INDIVIDUAL OR PERSON AUTHORIZED TO ACT ON BEHALF OF THE INDIVIDUAL WHEN THE DISCLOSURE HAS BEEN MADE TO A PERSON WHO THE INDIVIDUAL OR AUTHORIZED REPRESENTATIVE WOULD NOT HAVE A RIGHT TO DISCOVER UNDER APPLICABLE RULES OF CIVIL PROCEDURE.

(9B) THE RIGHTS GRANTED TO ALL NATURAL PERSONS BY SUBSECTION (8) DO NOT EXTEND TO INFORMATION ABOUT THEM THAT RELATES TO AND IS COLLECTED IN CONNECTION WITH OR IN REASONABLE ANTICIPATION OF A

CLAIM OR CIVIL OR CRIMINAL PROCEEDING INVOLVING THEM.

(10) THE RECORD KEEPING REQUIREMENTS IMPOSED BY THIS SECTION SHALL NOT INCLUDE DISCLOSURES MADE BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION PURSUANT TO AN INSURANCE FUNCTION.

Section 4. Section 33-19-306, MCA, is amended to read:

"**33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; ~~and~~

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

~~(iii)~~(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, provided ~~such~~ that the disclosure is limited to that which is reasonably necessary:

(a) to enable ~~such~~ the person to perform ~~a business, professional, or~~ an insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and ~~such~~ the person agrees not to further disclose the information ~~further~~ without the individual's separate, written authorization ~~unless the further disclosure:~~; or

~~(i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization; or~~

~~(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance-support organization; or~~

(b) to enable ~~such~~ the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, insurance producer, insurance-support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization if the information disclosed is

limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, insurance producer, or insurance-support organization to perform its insurance function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization.

(7) Disclosure may be made to a law enforcement or other government authority ~~that agrees not to further disclose the information without the individual's separate, written authorization~~:

(a) to protect the interests of the insurance institution, insurance producer, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, insurance producer, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) Disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies, provided that:

(a) no individual ~~may be~~ is identified in any actuarial or research report;

(b) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(c) the actuarial or research organization agrees not to further disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization~~ without the individual's separate, written authorization.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only ~~such~~ information is disclosed ~~as~~ that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or~~

~~insurance support organization~~ without the individual's separate, written authorization.

~~(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:~~

~~(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;~~

~~(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed, and~~

~~(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.~~

(12)(a) DISCLOSURE THAT IS LIMITED TO THAT WHICH IS REAONABLY NECESSARY MAY BE MADE TO ANY AFFILIATE WHOSE ONLY USE OF THE INFORMATION WILL BE IN CONNECTION WITH AN AUDIT OF THE INSURANCE INSTITUTION OR INSURANCE PRODUCER IF THE AFFILIATE AGREES NOT TO DISCLOSE THE INFORMATION FOR ANY OTHER PURPOSE OR TO UNAFFILIATED PERSONS.

(b) DISCLOSURE OF NON-MEDICAL RECORD INFORMATION THAT IS LIMITED TO THAT WHICH IS REASONABLY NECESSARY MAY BE MADE TO ANY AFFILIATE WHOSE ONLY USE OF THE INFORMATION WILL BE IN CONNECTION WITH THE MARKETING OF INSURANCE OR FINANCIAL PRODUCTS IF THE AFFILIATE AGREES NOT TO DISCLOSE THE INFORMATION FOR ANY OTHER PURPOSE OR TO UNAFFILIATED PERSONS.

~~(13)~~(12) Disclosure that is limited to that which is reasonably necessary may be made to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer OR THE MARKETING OF AN INSURANCE OR FINANCIAL PRODUCT OR SERVICE ~~or the marketing of an insurance product or service~~ OR DISCLOSURE LIMITED TO THAT WHICH IS REASONABLY NECESSARY MAY BE MADE TO AN AFFILIATED INSURANCE INSTITUTION OR INSURANCE PRODUCER FOR THE MARKETING OF AN INSURANCE PRODUCT if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

~~(14)~~(13) ~~Disclosure~~ Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

~~(15)~~(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization.

~~(16)~~(15) Disclosure that is limited to that which is reasonably necessary may be made to a

professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

~~(17)~~(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority that has agreed not to further disclose the information without the individual's separate, written authorization for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

~~(18)~~(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(18) The commissioner may, after notice and hearing, adopt rules to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding ~~authorized~~ disclosures of personal or privileged information pursuant to ~~subsection (2)~~ SUBSECTIONS (2) THROUGH (17) but may define:

(a) the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information; and

~~(b) the recordkeeping requirements applicable to an insurance institution, insurance producer, or insurance-support organization regarding unauthorized disclosures of personal or privileged information pursuant to subsections (3) through (17).~~"

(18) THE COMMISSIONER MAY, AFTER NOTICE AND HEARING, PROMULGATE RULES TO CARRY OUT THE PROVISIONS OF THIS SECTION. SUCH RULES MAY NOT DEFINE "REASONABLY NECESSARY" AND MAY NOT ADDRESS OR CONCERN, IN ANY MANNER, DISCLOSURES AUTHORIZED UNDER THIS CHAPTER, BUT MAY DEFINE:

(a) THE REQUIREMENTS OF ANY AGREEMENT OBTAINED BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION REGARDING THE DISCLOSURES OF PERSONAL OR PRIVILEGED INFORMATION; AND

(b) THE RECORDKEEPING REQUIREMENTS APPLICABLE TO AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION REGARDING UNAUTHORIZED DISCLOSURES OF PERSONAL OR PRIVILEGED INFORMATION.

NEW SECTION. **SECTION 5. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JANUARY 1, 2000.

- END -

Latest Version of SB 103 (SB0103.01)
Processed for the Web on December 22, 1998 (10:03AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of this bill for the bill's primary sponsor.

Status of this Bill | 1999 Legislature | Leg. Branch Home
This bill in WP 5.1 | All versions of all bills in WP 5.1

Prepared by Montana Legislative Services
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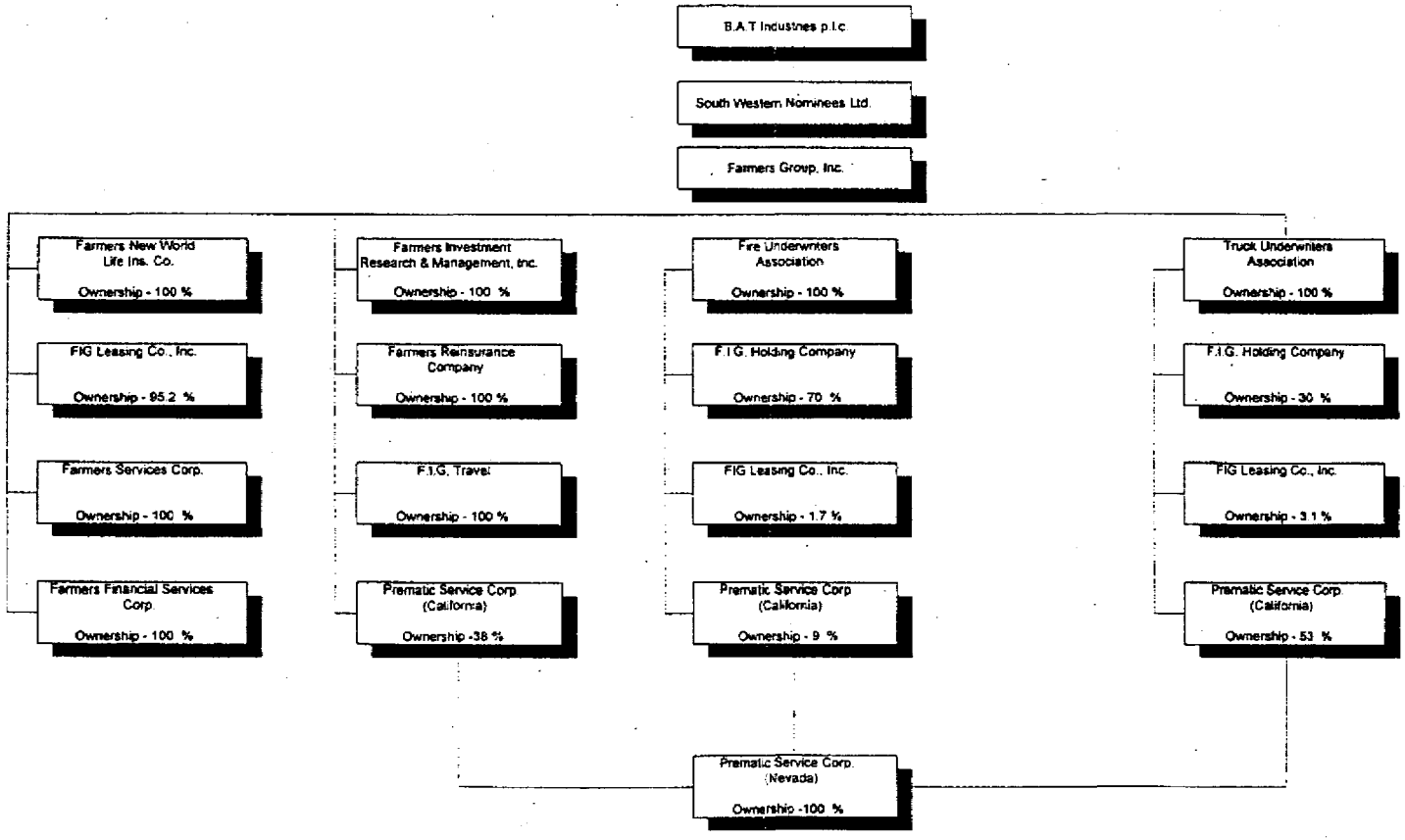
lheiman@state.mt.us

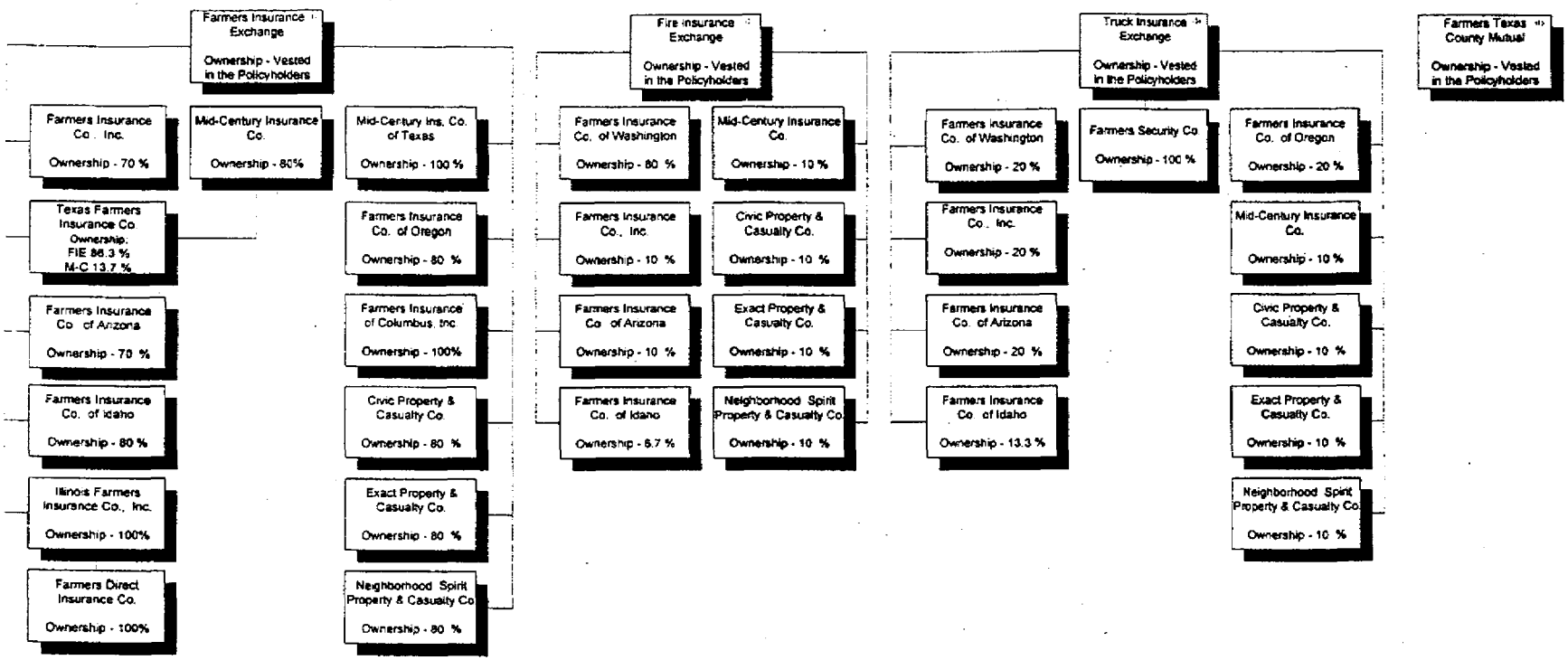
SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY

PART 1 - ORGANIZATIONAL CHART
(continued)



SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY

PART 1 - ORGANIZATIONAL CHART


Farmers Insurance Exchange
Ownership - Vested in the Policyholders
Farmers Insurance Co., Inc.
Ownership - 70 %
Mid-Century Insurance Co.
Ownership - 80%
Mid-Century Ins. Co. of Texas
Ownership - 100 %
Texas Farmers Insurance Co.
Ownership:
FIE 86.3 %
M-C 13.7 %
Farmers Insurance Co. of Oregon
Ownership - 80 %
Farmers Insurance Co. of Arizona
Ownership - 70 %
Farmers Insurance of Columbus, Inc.
Ownership - 100%
Farmers Insurance Co. of Idaho
Ownership - 80 %
Civic Property & Casualty Co.
Ownership - 80 %
Illinois Farmers Insurance Co., Inc.
Ownership - 100%
Exact Property & Casualty Co.
Ownership - 80 %
Farmers Direct Insurance Co.
Ownership - 100%
Neighborhood Spirit Property & Casualty Co.
Ownership - 80 %
Fire Insurance Exchange
Ownership - Vested in the Policyholders
Farmers Insurance Co. of Washington
Ownership - 80 %
Mid-Century Insurance Co.
Ownership - 10 %
Farmers Insurance Co., Inc.
Ownership - 10 %
Civic Property & Casualty Co.
Ownership - 10 %
Farmers Insurance Co. of Arizona
Ownership - 10 %
Exact Property & Casualty Co.
Ownership - 10 %
Farmers Insurance Co. of Idaho
Ownership - 6.7 %
Neighborhood Spirit Property & Casualty Co.
Ownership - 10 %
Truck Insurance Exchange
Ownership - Vested in the Policyholders
Farmers Insurance Co. of Washington
Ownership - 20 %
Farmers Security Co
Ownership - 100 %
Farmers Insurance Co. of Oregon
Ownership - 20 %
Farmers Insurance Co., Inc.
Ownership - 20 %
Mid-Century Insurance Co.
Ownership - 10 %
Farmers Insurance Co. of Arizona
Ownership - 20 %
Civic Property & Casualty Co.
Ownership - 10 %
Farmers Insurance Co. of Idaho
Ownership - 13.3 %
Exact Property & Casualty Co.
Ownership - 10 %
Neighborhood Spirit Property & Casualty Co.
Ownership - 10 %
Farmers Texas County Mutual
Ownership - Vested in the Policyholders

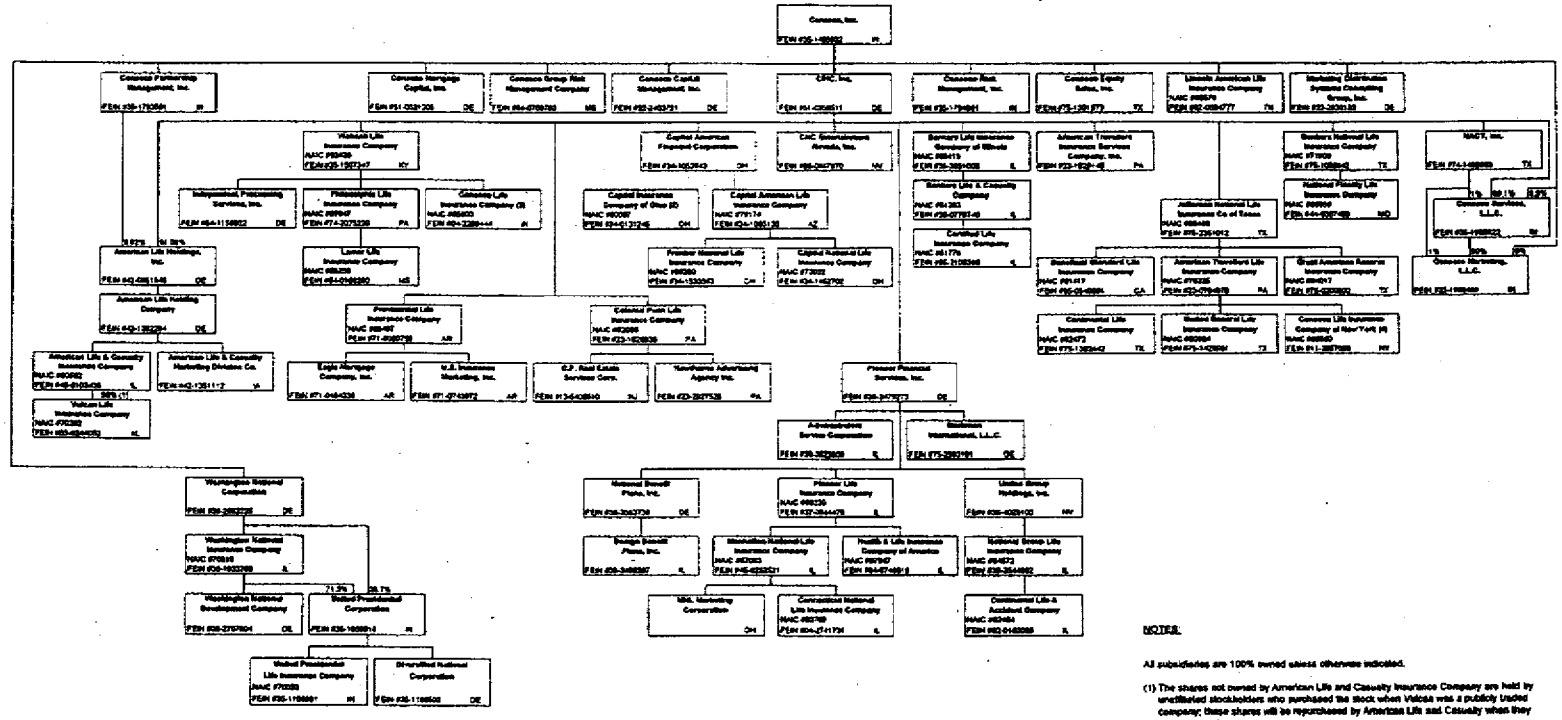
(1) Managed by Farmers Group, Inc. dba Farmers Underwriters Association.

(2) Managed by Fire Underwriters Association.

(3) Managed by Truck Underwriters Association.

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE February 1, 1999
BILL NO. SB 103

SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY GROUP
PART 1 - ORGANIZATIONAL CHART



NOTES:

All subsidiaries are 100% owned unless otherwise indicated.

(1) The shares not owned by American Life and Casualty Insurance Company are held by unaffiliated stockholders who purchased the stock when Vulcan was a publicly traded company; these shares will be repurchased by American Life and Casualty when they are presented.
(2) A mutual assessment life and accident association.
(3) Formerly Massachusetts General Life Insurance Company.
(4) Formerly American Travellers Insurance Company of New York.

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE February 1, 1999
BILL NO. SB 103

PROPOSED AMENDMENTS TO SB 103

1. Section 1, page 2, ln. 10, insert a comma after "directly" and before "or."

2. Section 1, page 2, ln. 11, insert a comma, after "intermediaries" and before "controls."

3. Section 3, page 8, ln. 15, insert after "that" and before "the": "<u>, subject to the exception provided in subsection nine (9) of this section,</u>"

4. Section 3, page 8, ln. 22, add a subsection, subsection 9, to read:

> (9) <u>The provisions of this subsection do not require disclosure to the individual or person authorized to act on behalf of the individual when the disclosure has been made to a person whom the individual or authorized representative would not have a right to discover under applicable rules of civil procedure.</u>

5. **OPTION A:** Section 4, page 11, strike subsection 12 and replace with:

> (12) (a) Disclosure that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.
>
> (b) Disclosure of non-medical record information that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information will be in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

OR: OPTION B:

Section 4, page 11, subsection 12, line 20, re-instate the stricken words and insert "<u>or financial</u>" between "insurance" and "product."

Farmers Insurance Group
Jon Metropoulos
Gough, Shanahan, Johnson & Waterman
Ph. 406-442-8560
Fax 406-442-8783

ROLL CALL

SENATE COMMITTEE Subcommittee on SB 103 Public Health Welfare and Safety DATE February 1, 1999

NAME	PRESENT	ABSENT	EXCUSED
Senator Franklin	✓		
Senator Gumies, V C			✓
Senator Thomas, Chair	✓		

Attach to each day's minutes

ROLLCALL.F08

DATE February 1, 1999

SENATE COMMITTEE ON Sub Public Health, Welfare & Safety

BILLS BEING ~~HEARD~~ DISCUSSED TODAY: SB 103

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Todd Thew	442-6610	MNA	103	✓	
Mark Baker	449-3118	ACLI	103		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG Meeting Sub committee on

COMMITTEE: Senate Public Health SB103

DATE: February 1, 1999

MINUTES		CONTENT NOTES
0.4 -	Tape 1 Side A	Sen. Thomas called to order SB103 Russell Neil Auditors Office to
	6:0 Min	Explain their Grey Bill -
8.4 -	10.6	- Discussion - Sen Franklin Move Amendment -
10.6 -	11.3	Russell Neil - Cont to Explain
	16.0	Discussion -
20.4 -	26.2	Sen. Franklin Moved Amendment #
	35.	Very poor quality Tape - garbled language
	No Side B of Tape #1	(Bad Tape)
	Tape 2 Side A	0.3 - Russell Continues to explain Grey Bill
	8.0	Susan Fox explains Amendments
	20.0	Sen. Travis - Motion SB103 be reported out of Sub committee & Do Pass AM
	32.0	Susan Fox explain Long Amendment

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 3, 1999 at 3:20 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)

Members Excused: Sen. John C. Bohlinger (R)
Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: SB 81, SJR 5, SB 103, SB 209

CHAIRMAN AL BISHOP called the meeting to order and stated that he would give **Susan Good** about five minutes to speak, at the maximum.

SEN. THOMAS stated he visited with **SEN. HARP** on the amendment that **SEN. FRANKLIN** was offering, and he doesn't want this amendment on this bill. He can tell them, how you vote is up to you, but he doesn't want it in there.

SEN. CHRISTIAENS asked if **Mary Dalton** could talk about this please.

Mary Dalton, added to what **John Larson** said. For us this now becomes a new benefit, if you added us as an outpatient service and she doesn't have a cost for only physical therapy. She does know that they did originally have the actuary look at having physical occupational and speech therapy with the limit of 22 visits each and it would cost .37 cents more to put all three of them on to the policy. So there is some associated costs.

SEN. ECK said she was pleased to hear the report that these services were probably already going to be available because that is what she has been telling people. And that if they come in, in a position where they can expand service and services as they may want to next time. This is something that might want to specifically be written in. So far as adding the words "upon referral" to what we already have, she doesn't know if that really does anything, but she doesn't think that to list one particular service is going to help. She thinks in appropriate cases we can count on the physician to refer to the appropriate outpatient services.

SEN. FRANKLIN closed on her amendment. She stated that it is a judgement call. The spirit in which this is being offered is on the good faith of the physical therapists who are concerned and want to participate at the end costs. It is in that spirit she offered the amendment.

Vote: **On Voice Vote**, of **SENATOR FRANKLIN'S AMENDMENT #SB008107. to SB 81, (SEN. HARGROVE AND SEN. FRANKLIN** indicate their show of hands, for the **record to reflect both their "YES" votes**, and for the **record to reflect SEN. BOHLINGER'S** proxy **"NO"** vote, **Motion Failed.**

DISCUSSES SB 103

CHAIRMAN BISHOP asked **SUSAN FOX** to describe another amendment by **SEN. FRANKLIN.**

EXHIBIT(phs27a07)

Susan Fox, Legislative Researcher, clarified this amendment was in conjunction with **SB 103**, and the changes that the **DPHHS** requested regarding the privacy bill, that they amend the same

Section in this bill #33-19-306. But it gave a broad exception to the disclosure requirement.

That issue surfaced in the **SB 103 Subcommittee Meetings.** She thought that the same amendment would be appropriately placed in this bill and it was developed with input from **John Koch, DPHHS.** Its to limit the disclosures required the by federal so that the Department can disclose this information, or the insurance companies can disclose it to the Department which in turn can disclose it for purposes and recording to the Federal Government.

SEN. THOMAS asked **Susan Fox** if they pass **SB 103** and that amendment is in that bill, doesn't that make it law.

Susan Fox answered if both bills were to pass, **SB 103 with the amendment** that may be considered, and put on this bill, it would end up being a conflict that would have to be fixed in the **HOUSE HUMAN SERVICES COMMITTEE.** She thought that since we had a **Subcommittee** that worked on it, and understood what the problem was, it may be just easier to deal with it now. If this amendment goes on, and the one is **SB 103** goes on, they would work together and there won't be a conflict.

SEN. THOMAS stated that if we put this into the bill and **SB 103** doesn't pass, then what.

Susan Fox answered that it still limits the disclosure to specifically to what the Department needs disclosure for. It does not give a broad exception to all insurance disclosure provisions for anyone that participates in the CHIP program. It works without **SB 103**, but it doesn't work with **SB 103.**

SEN. HARGROVE said the question had been answered, but he some how let it fly past him. If this passes, could we disregard **SB 103.**

Motion: **SEN. CHRISTIAENS** moved **SEN. FRANKLIN'S AMENDMENT #SB008105.asf be adopted.**

Nancy Ellery, Department Public Health and Human Services stated that she believes, and she read it quickly, but she believes that amendment is being discussed right now and relates to Sections which were deleted by the previous amendments that were approved from **Senator Harp.**

SEN. FRANKLIN stated that perhaps if she could offer a suggestion that they hold on this amendment to **Susan Fox**, and then use your history and expertise that when we move into the other House should the other bill pass, we can hopefully try to make the case to them.

SEN. CHRISTIAENS withdrew his MOTION that **SEN. FRANKLIN'S AMENDMENT #SB008105.asf to SB 81 BE ADOPTED.**

SEN. HARGROVE stated to the committee there is another bill that was sitting and may never move. It may be in the **State Administration Committee.** It would be a Constitutional Amendment to do just what **SB 103** does here. If **SB 103** should somehow die, there will be another proposal to have that drawn as a Constitutional Amendment.

Motion/Vote: SEN. THOMAS moved that **SB 81 DO PASS AS AMENDED. Motion carried unanimously** with **SEN. BARTLETT, BOHLINGER, AND GRIMES** voting **"YES"** by proxy **-11-0-.**
EXHIBIT(phs27a08)EXHIBIT(phs27a09)EXHIBIT(phs27a10)

EXECUTIVE ACTION ON SJR 5

CHAIRMAN BISHOP thought there was a couple of amendments. He said that on line 16 and line 17, the language there looked a bit much to him. He held the bill back the other day, although somebody wanted to move it out of here. They hadn't read the bill.

Motion: SEN. FRANKLIN moved to **AMENDED SJR 5 - SJ000501.asf.**
Vote: Motion carried.
EXHIBIT(phs27a11)

Motion/Vote: SEN. FRANKLIN moved that SJR 5 DO PASS AS AMENDED. With Sen. Hargrove voting no. Motion Carried - 7 - 1.

EXECUTIVE ACTION ON SB 103

SEN. THOMAS explained they had half of a gray bill so they could follow along with a lot of the amendments that are before the committee in the form of amendments. It made their job easier to

go through and understand what they were looking at, and try to figure what was best. The **Subcommittee Members** serving **on SB 103**, was **SEN. FRANKLIN, SEN. GRIMES and himself.** We did spend a good deal of time on this legislation, and had a lot of good help from many people on the bill. The amendments in the form that they are proposed to the committee meet with **Sen. Grimes,** and my approval. He didn't think they met with **Sen. Franklin's** complete approval. He thought that is somewhat fair to say. She can advise you just what and where her approval is. One of the biggest issues that it came down to was marketing and whether you could use some data to market within your organization, insurance company more or less. There was some marketing left in the legislation and that would probably be our area of dispute. So the appointed Subcommittee on **SB 103** with a majority vote, recommends these amendments to you. If it's permissible to move the legislation **SEN. FRANKLIN,** would you do that.

Motion: **SEN. FRANKLIN** moved that **SB 103 DO PASS** for the purposes of discussion.

Motion: **SEN. THOMAS** moved the **AMENDMENTS #SB010302.asf** that the **SUBCOMMITTEE RECOMMENDED TO SB 103 BE ADOPTED.**
EXHIBIT(phs27a12)

Questions from Committee Members

SEN. CHRISTIAENS indicated he had one question. He wanted to know who the insurance support organizations may be?
He asked if it is broad enough or does it include the companies that produce the inspection reports, such as Equifax which is the largest insurance reporting agency in the world. He clarified that he wants to know if Equifax is one of the insurance support organizations that is in this bill.

SEN. FRANKLIN asked if he could go over this again.

SEN. CHRISTIAENS said "yes", number 3, line 11 following organization, to any affiliate for marketing of insurance or financial products.

SEN. FRANKLIN said she wanted to take a stab at that subject. She said they really did not select one particular insurer by name. She really tried to assure the insurers this wasn't a pick on insurance company bill. They really didn't deal with particular insurance entities. She thought it wouldn't have been appropriate for them to discuss any particular entities. She thought that he was getting to a question in which she was not familiar. She asked the Department to respond to that.

SEN. THOMAS replied that he would give a quick response as well. He stated that **SEN. FRANKLIN** is more than accurate. They didn't discuss names. They have some tables that were handed out, company charts, didn't have different company names that you are welcome to. In this aspect, would a company such as you identified be a member say, under this company. If they are a member of this company then they would be part of that.

SEN. CHRISTIAENS indicated that he didn't have the chart.

SEN. THOMAS continued he doesn't think that within the term, a lot of this bill fits within the term on page 3, line 15, insurance function. So within the scope of them being within the insurance function, they can have data to do their job. That would be contained within there. They would not be able to say, if XYZ company contracted to Equifax, to do part of their insurance function. They could not turn around and use Equifax to market. They are not an affiliated company. He guessed that answered his question.

SEN. FRANKLIN agreed.

SEN. CHRISTIAENS asked if there was an insurance company present. Somebody that does underwriting. He asked if they use an outside source to develop some of the information they use in underwriting.

Susan Witte, Blue Cross and Blue Shield answered, stating that she doesn't believe that Blue Cross uses an outside source.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 33}

SEN. CHRISTIAENS stated that's right. This is a bigger issue than what he thinks the members are aware of. Under the Fair Credit Reporting Act, which is Federal Law, it was developed in 1974, companies such as the one he mentioned, produced the reports that are used in the underwriting. That information is used in data banks all over the country. He would like an insurance person to talk to the committee before they act on the bill.

SEN. FRANKLIN said **Russell Hill**, who just walked into the room, might be able to speak to this. They did some work on the bill, and on how information would be shared. There was some restrictions placed on the sharing of information. **Russell Hill** has done a fair amount of research in terms of how information can be shared. He might be able to answer as to rightly or

wrongly to your question. She asked if **Russell Hill** could address the committee.

Russell Hill, Chief Legal Counsel, State Auditor's Office said he doesn't know the question.

SEN. FRANKLIN asked if they could reformulate the question, and since **Russell Hill** has the background, perhaps he could help them formulate the question, that **SEN. CHRISTIAENS** needed answered.

SEN. CHRISTIAENS said, if they have the bill in front of them, they should to able understand it. On line 10 of the Title, after the information about an individual by an insurance institution, it's the next section, insurance producer, or insurance support organization. His question is, "the insurance support organization and who is included in that." The company that he referred to is Equifax. They are only one of the companies, however they are the largest in the world. They use the information. There are companies who sell those lists. He worked for this group for 15 years and he knows what happened. If they are not one of those, they should be.
Russell Hill State Auditor's Office, said he is not familiar with Equifax, but from what **SEN. CHRISTIAENS** says, it sounds like they do fit within the definition of insurance support organization. He suspects that the folks with the industry, that disagree will make that clear. An insurance support organization is, in general, the kinds of organizations that provide information to insurance companies. They may collect it originally for insurance companies. They may collect it from elsewhere like credit ratings. Is that what they are talking about?

In his opinion they come within this definition, but he can't say. He hasn't specifically looked at it.

SEN. THOMAS said being part of that function, is part of their definition of an insurance function. Part of that process is what you are saying. They have said in this legislation, what the aspects of an insurance function is okay. We are not trying to stop insurance functions from happening.

Russell Hill said that is exactly right. They are saying you have included it within the context of an authorization form, but if there is secondary disclosures, you may have to get that permission. But absolutely, if it is an insurance function, and it is in that exchange of information, they were not stopping it.

SEN. THOMAS said that is alright, what they just talked about. That is what the legislation anticipates would happen. You have company like Aetna, and they have hired Equifax to do something

for them, to be part of the insurance function. But they are not related financially, those two companies; okay. Can they share this data back and forth for marketing purposes?

Russell Hill asked if they are talking health care information.

SEN. THOMAS answered he thinks that is **SEN. CHRISTIAENS** concern.

Russell Hill asked, we are talking the medical record information and the marketing is by Aetna.

SEN. THOMAS answered, "no" by Equifax, he thinks that is the concern.

Russell Hill stated his initial instinct is "no". It doesn't become an insurance function.

SEN. THOMAS agreed that was his understanding also.

SEN. THOMAS said to **SEN. FRANKLIN**, if he read the paper right, she worked with them a great deal on this bill. He has indicated his general acceptance with these amendments.

SEN. FRANKLIN said she wanted to thank the committee members and all the Subcommittee folks. This was one of the better processes of committee meetings that she has been involved with for 5 years. It was a really good professional effort. Everybody kind of whittled away at the pieces that were significant for them. It was a really good process. Thank you to the chair, and those that participated.

Some of the issues that were concerns, did get resolved. There is a basic philosophical difference. The terms of the bill was a little broader in marketing functions, than she would have liked. She is comfortable with the half-a-loaf theory. They are in a better position than they were before, and that is kind of where they are.

SEN. FRANKLIN said for the record, she is going to vote against the amendments. She would have liked to have not seen the intra-affiliate marketing. That is the real crux of it. Quite honestly, the amendments on Page 11 talk about really the core issue, which was whether or not, insurers could share between their affiliates the information for marketing purposes.

This does permit them to do it, but it limits it to personal information, not medical information. Does this make sense to the Committee. That is why she calls it the half-a-loaf. They can share between affiliates in which originally the intent of

the bill was, quite honestly, to limit the affiliates from sharing. The affiliates are so broad, they are just huge companies. That was the idea, that you could narrow it down. Well they didn't win on that. It was an important amendment for **Jon Metropoulous, Farmers Insurance Group of Companies.** It was an important amendment for **ACLI** (American Council of Life Insurance), she lost on that amendment. That is the bottom line.

In the amendments as they sit, affiliates can share information between them, but on the other hand, what they can share will be limited to personal information. No personal information, you could make the arguments pretty broad. Its name, occupation, personal habits, date of birth, maybe financial information. There is a lot of personal information, but they can't share health care information. Again thanks to the Committee, that is why she called it half-a-loaf. They are limiting it somewhat, but it is broader than what she would have liked. She asked the Committee members if that was clear. When push came to shove, that was the core philosophical dispute.

CHAIRMAN BISHOP said he hopes this bill doesn't come on the Floor on Saturday morning.

SEN. CHRISTIAN said he has to mention this because its exactly that kind of information, and the personal information that for years had the Blackfeet Indian Reservation with no one who would insure any one who lived up there. Because, and this goes back to the time when he worked for the company, because of financial and personal habits of Native Americans, because it could be proven that they had more auto accidents. There driving records were poor, no company would insure them, Their were red lined. That had to change over the years, and this is why he still has a real problem with what the bill is allowing. He thinks it is better in the fact that maybe medical information is a little closer held, but he doesn't like the bill.

Vote: Motion carried 5-4 with SEN. ECK, CHRISTIAN, BARTLETT AND FRANKLIN, voting no.

Motion/Vote: SEN. THOMAS moved that **SB 103 DO PASS AS AMENDED. Motion carried 8-1 with SEN. CHRISTIAENS voting no.**

EXECUTIVE ACTION ON SB 209

Motion: SEN. CHRISTIANS moved that **SB 209 DO PASS.**

Discussion:

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE February 3 1999
BILL NO. SB81

Amendments to Senate Bill No. 81
1st Reading Copy

Requested by Senator Eve Franklin

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
January 27, 1999

1. Page 4, line 4 through line 5.
Strike: "[sections 1 through 9] and in"

2. Page 7, line 2.
Following: "authority"
Insert: "as required by federal or state law or"

- END -

SENATE HEALTH & WELFARE
EXHIBIT NO. 8
DATE February 3 1999
BILL NO. SB 81

Franklin Amd. to SB 81 - Yes

SB 81 As Amended do pass - Yes

Sue Bartlett

SENATE HEALTH & WELFARE
EXHIBIT NO. 9
DATE February 3, 1999
BILL NO. SB81

Ms Chairman,

Please consider this proxy as my YES vote for the CHIMS program.

SB. 81.

Mary (Ryder Story)

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE February 3, 1999
BILL NO. SB81

D. Grimes

SB81 For Amendment
For ARM amendment
NO on PT Amendment
For bill

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE
BILL NO.

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE
BILL NO.

Amendments to Senate Bill No. 103
1st Reading Copy
Requested by Senator Fred Thomas
For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
February 1, 1999

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE February 3, 1999
BILL NO. SB 103

1. Title, line 9.
Following: "RESTRICTING"
Strike: "UNAUTHORIZED"
Insert: "DISCLOSURE OF MEDICAL RECORD INFORMATION; ALLOWING"
Strike: "PERSONAL OR PRIVILEGED"

2. Title, line 10.
Following: "INFORMATION"
Insert: "THAT IS NOT MEDICAL RECORD INFORMATION"

3. Title, line 11.
Following: "ORGANIZATION"
Insert: "TO ANY AFFILIATE FOR MARKETING OF INSURANCE OR FINANCIAL PRODUCTS"

4. Title, line 13.
Strike: "AND"

5. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE"

6. Page 2, line 10.
Following: "directly"
Insert: ","

7. Page 2, line 11.
Following: "intermediaries"
Insert: ","

8. Page 4, line 26.
Following: "history,"
Insert: "medical claims history,"

9. Page 5, line 26.
Following: line 25
Insert: "(25) (a) "Separate, written authorization" means an individual's written authorization that is:

(i) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through (17); and

(ii) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization pursuant to 33-19-204.

(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17)."
Renumber: subsequent subsections

10. Page 8, line 15.
Following: "that"
Insert: ", subject to the exception provided in subsection (9),"

11. Page 8, line 17.
Following: "and"
Strike: "the"

Insert: ", upon request, a"
Following: "information"
Insert: "pursuant to 33-19-306(2) through (17)"

12. Page 8, line 22.
Following: line 21
Insert: "(9) The provisions of subsection (8) do not require disclosure to the individual or person authorized to act on behalf of the individual when the disclosure has been made to a person against whom discovery is prohibited under the applicable rules of civil procedure."

13. Page 10, line 11 through line 12.
Following: "authority" on line 11
Strike: the remainder of line 11 through "authorization" on line 12

14. Page 11, line 18.
Following: "(12)"
Insert: "(a)"

Strike: "an"
Insert: "any"

15. Page 11, line 22.
Following: line 21
Insert: "(b) Disclosure of information that is not medical record information and that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons."

16. Page 12, line 4 through line 5.
Following: "authority" on line 4
Strike: remainder of line 4 through "authorization" on line 5
Insert: "as required by federal or state law or"

17. Page 12, line 12.
Strike: "subsection"
Insert: "subsections"
Following: "(2)"
Insert: "through (17)"
Following: "define"
Strike: ":"

18. Page 12, line 13.
Strike: "(a)"

19. Page 12, line 14 through line 17.
Following: "information" on line 14
Strike: the remainder of line 14 through "(17)" on line 17

20. Page 12, line 18.
Following: line 17
Insert: "NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective January 1, 2000."

- END -

ROLL CALL

SENATE COMMITTEE **PUBLIC HEALTH, WELFARE & SAFETY** DATE February 3, 1999

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BARTLETT	✓		
SENATOR BERRY	✓		
SENATOR BOHLINGER			✓
SENATOR CHRISTIAENS	✓		
SENATOR DEPRATU	✓		
SENATOR ECK	✓		
SENATOR FRANKLIN	✓		
SENATOR GRIMES			✓
SENATOR HARGROVE	✓		
SENATOR THOMAS, VC	✓		
SENATOR BISHOP, CHAIR	✓		

Attach to each day's minutes

ROLLCALL.F08

SENATE STANDING COMMITTEE REPORT

February 4, 1999

Mr. President:

We, your committee on **Public Health, Welfare and Safety** report that **Senate Bill 81** (first reading copy -- white) **do pass as amended.**

Signed: Al Bishop
Senator Al Bishop, Chair

And, that such amendments read:

1. Title, line 6.
Following: "PROGRAM;"
Insert: "PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM USING FUNDS APPROPRIATED FOR THE PROGRAM TO EXPAND MEDICAID ELIGIBILITY CRITERIA;"

2. Title, line 7.
Strike: "OF PUBLIC HEALTH AND HUMAN SERVICES"
Insert: "TO ALTER ELIGIBILITY REQUIREMENTS IF FUNDING IS INSUFFICIENT; ALLOWING THE DEPARTMENT"

3. Title, line 10 through line 11.
Following: "PROGRAM;"
Strike: "AMENDING" on line 10 through ";" on line 11
Insert: "REQUIRING THAT RULES BE REVIEWED BY AN APPROPRIATE INTERIM COMMITTEE; REQUIRING THAT EXCESS FUNDS BE DEPOSITED INTO THE GENERAL FUND;"
Following: "DATE" on line 11
Insert: "AND A CONTINGENT TERMINATION PROVISION"

4. Page 1, line 27.
Following: "children."
Insert: "The department may not use money appropriated for this program to expand eligibility criteria for the Montana medicaid program."

5. Page 2, line 2.
Following: "(b)"

Committee Vote:
Yes 11, No 0.

281149SC.srf

Insert: "except as provided in subsection (4),"

6. Page 2.
Following: line 11
Insert: "(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate."

7. Page 2, line 16.
Following: "physician"
Insert: "and advanced practice registered nurse"

8. Page 2, line 28.
Strike: "an"
Strike: "company"
Insert: "companies"
Strike: "entity"
Insert: "entities"

9. Page 3, line 9.
Following: "rules"
Insert: "-- review by interim committee"

10. Page 3.
Following: line 23
Insert: "(4) Rules adopted by the department pursuant to [sections 4 and 8] must be presented to and reviewed by an appropriate interim committee that examines issues related to children and families."

11. Page 4, line 3 through page 7, line 5.
Strike: section 10 in its entirety
Insert: "NEW SECTION. **Section 10. Excess funds to general fund.** Any funds appropriated for the program that remain unexpended at the end of the biennium must be transferred to the general fund."

12. Page 7.
Following: line 11
Insert: "NEW SECTION. **Section 13. Contingent termination.**
(1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund."

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Public Health, Welfare and Safety** report that **Senate Bill 103** (first reading copy -- white) **do pass as amended.**

Signed: Al Bishop
Senator Al Bishop, Chair

And, that such amendments read:

1. Title, line 9.
Following: "RESTRICTING"
Strike: "UNAUTHORIZED"
Insert: "DISCLOSURE OF MEDICAL RECORD INFORMATION; ALLOWING"
Strike: "PERSONAL OR PRIVILEGED"

2. Title, line 10.
Following: "INFORMATION"
Insert: "THAT IS NOT MEDICAL RECORD INFORMATION"

3. Title, line 11.
Following: "ORGANIZATION"
Insert: "TO ANY AFFILIATE FOR MARKETING OF INSURANCE OR FINANCIAL PRODUCTS"

4. Title, line 13.
Strike: "AND"

5. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

6. Page 2, line 10.

Committee Vote:
Yes 8, No 1.

290829SC.sjo

Following: "directly"
Insert: ","

7. Page 2, line 11.
Following: "intermediaries"
Insert: ","

8. Page 4, line 26.
Following: "history,"
Insert: "medical claims history,"

9. Page 5, line 26.
Following: line 25
Insert: "(25) (a) "Separate, written authorization" means an individual's written authorization that is:

(i) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through (17); and

(ii) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization pursuant to 33-19-204.

(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17)."
Renumber: subsequent subsections

10. Page 8, line 15.
Following: "that"
Insert: ", subject to the exception provided in subsection (9),"

11. Page 8, line 17.
Following: "and"
Strike: "the"

Insert: ", upon request, a"
Following: "information"
Insert: "pursuant to 33-19-306(2) through (17)"

12. Page 8, line 22.
Following: line 21
Insert: "(9) The provisions of subsection (8) do not require disclosure to the individual or person authorized to act on behalf of the individual when the disclosure has been made to a person whose identity could not be discovered under the

applicable rules of civil procedure."

13. Page 10, line 11 through line 12.
Following: "authority" on line 11
Strike: the remainder of line 11 through "authorization" on line 12

14. Page 11, line 18.
Following: "(12)"
Insert: "(a)"
Strike: "an"
Insert: "any"

15. Page 11, line 22.
Following: line 21
Insert: "(b) Disclosure of information that is not medical record information and that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons."

16. Page 12, line 4 through line 5.
Following: "authority" on line 4
Strike: remainder of line 4 through "authorization" on line 5
Insert: "as required by federal or state law or"

17. Page 12, line 12.
Strike: "subsection"
Insert: "subsections"
Following: "(2)"
Insert: "through (17)"
Following: "define"
Strike: ":"

18. Page 12, line 13.
Strike: "(a)"

19. Page 12, line 14 through line 17.
Following: "information" on line 14
Strike: the remainder of line 14 through "(17)" on line 17

20. Page 12, line 18.
Following: line 17
Insert: "NEW SECTION. **Section 5. Effective date.** [This act] is effective January 1, 2000."

- END -

DATE February 3, 1999

SENATE COMMITTEE ON Public Health, Welfare & Safety

BILLS BEING HEARD TODAY: Ex Action SJR 5

SB 81, SB 209, SB 103

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Larson	447 8680	BlueCross & BlueShield	SB 81	Y	
Andrea Merrill	442-4276	Mental Health Assn			
Mary Dalton	444-4144	DPHHS			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG

COMMITTEE: Senate Public Health

DATE: February 3, 1999

MINUTES		CONTENT NOTES
01 - 09 - 3.0 -	Tape 1 Side A	Susan Good re: Committee Bill Questions - Sen Hargrave Vote to proceed Committee Bill
3.0 -		SB 81 - Sen Thomas DP - Sen Hays's Amendments
4.1 - 7.5		Susan Fox overview - S. Hays Amendments Discussion / Questions
8.1 -		Vote - Amendments - SB 81 -
9.9 -		Sen Franklin -
10.		Mona Jamison - urge support Amend -
20. - 22 Min -		Nancy Lelery - Sen. Franklin - with drew Amendment
25.2 - 33. Min		SB 103 Gray Bill Explained Sen Thomas Sen. Christians Questions Susan Wittle Blue Cross - Answered
0.7 - 7.0 - 17.0	Tape 1 Side B	Sen. Christians - Insurance Co. Sen. Franklin - ½ Way Vote -
19.0		SB 209, Sen. Barted Comments -
25. -		Chuck Butler response - SB 209 Tabled -
28. - 29. Min		Kathleen Martin - PPHHS - Communicable Dis Control

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 2, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. Paul Sliter, Vice Chairman (R)
Rep. Roy Brown (R)
Rep. Carley Tuss (D)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 103, SB 115, SB 347, SB 98, 2/19/1999
Executive Action: SB 115, SB 347, SB 99

HEARING ON SB 103

Opening Statement by Sponsor: Senator Franklin introduced SB 103
EXHIBIT(buh47a01) EXHIBIT(buh47a02)
{Tape : 1; Side : A; Approx. Time Counter : 0 - 149}

Proponents' Testimony: Mark O'Keefe, State Auditor
{Tape : 1; Side : A; Approx. Time Counter : 149 - 328}

Jon Metropolis, Ins. Agents
{Tape : 1; Side : A; Approx. Time Counter : 328 - 402}

Susan Whitey, Blue Cross and Blue Shield
{Tape : 1; Side : A; Approx. Time Counter : 402 - 408}

Dennis Iverson, Med Research
{Tape : 1; Side : A; Approx. Time Counter : 408 - 433}

Chris Jankowski, Council of Life Underwriters
{Tape : 1; Side : A; Approx. Time Counter : 433 - 500}

Tom Ebzery Yellowstone Comm. Health Plan
{Tape : 1; Side : B; Approx. Time Counter : 0 - 24}

Don Allen, MT Medical Benefits Plan
{Tape : 1; Side : B; Approx. Time Counter : 24 - 32}

Mona Jamison, MT Physical Therapists
{Tape : 1; Side : B; Approx. Time Counter : 32 - 93}

Beta Lovitt, Director of MT Med. Assn.
{Tape : 1; Side : B; Approx. Time Counter : 93 - 103}

Jim Smith, MT State Pharm. Assn.
{Tape : 1; Side : B; Approx. Time Counter : 103 - 131}

Betty Beverly, MT Senior Citizens Assn.
{Tape : 1; Side : B; Approx. Time Counter : 131 - 156}

Allen Strange, MT Primary Care
{Tape : 1; Side : B; Approx. Time Counter : 156 - 172}

Page Dringman, Am. Ins. of America
{Tape : 1; Side : B; Approx. Time Counter : 172 - 228}

Tod Judd, MT Nurses Assn member
{Tape : 1; Side : B; Approx. Time Counter : 228 - 236}

Rebecca Moe, MT Womens Lobby
{Tape : 1; Side : B; Approx. Time Counter : 236 - 244}

Jodi Smollee, All State **EXHIBIT(buh47a03) EXHIBIT(buh47a04)**
{Tape : 1; Side : B; Approx. Time Counter : 244 - 321}

Opponents' Testimony: Craig Sweet, Mont PRIG
{Tape : 1; Side : B; Approx. Time Counter : 321 - 342}

Questions from Committee Members and Responses: Rep. Bookout Squires, Stovall, Krenzler, Pavlovich and Simon question witnesses.
{Tape : 1; Side : B; Approx. Time Counter : 342 - 500}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 335}

Closing by Sponsor: Senator Franklin closed.
{Tape : 2; Side : A; Approx. Time Counter : 335 - 500}

HEARING ON SB 99

Opening Statement by Sponsor: Senator Tester introduced SB 99
{Tape : 2; Side : B; Approx. Time Counter : 0 - 57}

Proponents' Testimony: Mark O'Keefe, State Auditor
{Tape : 2; Side : B; Approx. Time Counter : 57 - 90}

Linda Wolfe **EXHIBIT(buh47a08)**
{Tape : 2; Side : B; Approx. Time Counter : 90 - 150}

Doug Meal, Montana State Fireman Assn.**EXHIBIT(buh47a05)**
{Tape : 2; Side : B; Approx. Time Counter : 150 - 156}

Susan Witte, Blue Cross/Blue Shield **EXHIBIT(buh47a06)**
{Tape : 2; Side : B; Approx. Time Counter : 156 - 172}

Greg Nuce, Law Enforcement Academy
{Tape : 2; Side : B; Approx. Time Counter : 172 - 194}

Claudia Clifford, State Auditor **EXHIBIT(buh47a07)**
{Tape : 2; Side : B; Approx. Time Counter : 194 - 206}

Don Allen, MT Med. Benefits Assn

Exhibit # 1
From Sen. Franklin
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

Testimony 17pgs

EXHIBIT 1
DATE 3/2/99
SB 103

Bill 103
Insurance Privacy Bill

* **SB 103 restricts health insurance companies from releasing personal health care information to third parties without permission. The release is restricted only if the information is personally identifiable.**
* **Current law contains loopholes which allow such transfers of personal health care information to virtually any third party. Worse, current Montana law does nothing to protect the privacy of that information once it has been disclosed by insurers to third parties.**
* **SB103 DOES NOT:**

⇒ Restrict an insurer's ability to gather primary health care information from its policyholders or their health care providers.

⇒ Prohibit the sale, transfer, or other disclosure of private, personal health care information to 3rd parties with permission from the insured.

⇒ Prohibit the exchange of medical information that is not personally identifiable.

⇒ Eliminate insurers' current ability to transfer private medical information under special circumstances enumerated in Montana law (i.e.– detecting or preventing fraud, verifying coverage or benefits, conducting internal audits, or evaluating medical care.)

* **SB103 requires insurers to keep a record for three years whenever they make a secondary disclosure of private health care information to 3rd parties, and to make that record available to the insured upon their request.**

EXHIBIT 2
DATE 2/2/99
SB 103

Amendment to SB 103 (second reading copy)
Requested by Sen. Franklin
Prepared by Montana Department of Insurance

1. Page 12, lines 8 through 11.
Strike: subsection (b) in its entirety
Renumber: section (12)(a)

DATE 3/2/99
SB 103

STATEMENT OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS IN OPPOSITION TO MONTANA SENATE BILL 103

The National Association of Independent Insurers (NAII) is an insurance trade association representing insurance companies writing over 41% of personal auto policies and over 36% percent of homeowners' policies in Montana. NAII is the largest full-service property-casualty insurance trade association in the country, representing 619 companies nationwide. The NAII and its members urge the House Committee on Business and Labor to vote against Senate Bill 103.

The Insurance Information and Privacy Act was originally enacted in 1981 as a means to protect the privacy of consumers. Up until this point, the act has worked to protect the privacy of individuals, while allowing insurers the flexibility needed to conduct business in an efficient manner. Unfortunately, the amendments affecting property-casualty insurers in SB 103 do nothing but slow down the claims process and in some instances put the safety of consumers in jeopardy.

The measure would prohibit insurers from releasing essential policyholder information. The bill has no positive benefits for consumers and is sure to interfere with the claims processing procedure and ultimately result in a policyholder backlash. SB 103 will require insurers to have policyholders sign a "disclosure of authorization form" in order to allow the insurance company to act on behalf of the policyholder. In cases where the insurer does not have a signed form, the company will not be allowed to release the policyholder's name or other relevant information.

NAII has great respect for the need for privacy of consumer information particularly health record information. The present act accomplishes that need. The amendments proposed by SB 103 appear to primarily result in slowing down the property and casualty insurance claims process.

Safeco Insurance Co., a member of NAII, handles over 20,000 claims annually for Montana consumers. Safeco closes greater than 75% of those claims within 3 weeks of report. Immediately after an accident, time is of the essence to minimize inconvenience and damage. The provisions of SB 103 will greatly hinder this speedy claims process and result in frustrated if not angry policyholders.

Requiring consumers to sign a disclosure of authorization form will slow down the process and put the safety of policyholders and their property at risk. Here are some examples of how the process would be slowed:

- When water damage occurs in a home, insurers dispatch repair firms to start water extraction immediately with their customers' verbal permission. This practice minimizes inconvenience to the homeowner and reduces the ultimate cost of clean up and repairs.

By using this process, repairs are started promptly, which could not happen with the need to obtain a written authorization to disclose a name or address to a repair firm.

- When a major storm occurs in an area, insurers do not have adequate staff to handle the claims using only the firm's adjusters; so many companies hire independent adjusting firms. These independent firms allow insurers to give customers fast, quality service during a time when an entire community is suffering damage. If consumers must wait for their storm claims to be assigned until authorizations are signed, this creates delay and adds to the frustration of storms.

- When a customer's auto is not drivable after an auto accident, insurance adjusting staff is able to quickly arrange car rentals for them directly with car rental companies who bill the insurer while delivering cars to the customer. Delay in finding alternate transportation will be most frustrating for the consumer.

The present Insurance Information and Privacy Act in Montana provides good protection for the consumer. The amendments proposed in Senate Bill 103 do not appear to provide additional protection. Consumers will eventually be unhappy with delays in claims handling and will not see a benefit from this amendment.

As drafted, the affect on the claims process caused by SB 103 is truly anti-consumer. It will cause premiums to increase and will build delays into the claims handling system. The National Association of Independent Insurers urges this committee to consider voting against Senate Bill 103.

Thank you for considering the needs of Montana Policyholders.

EXHIBIT 4
DATE 3/2/99
SB 103

Testimony of Allstate Insurance Company to the House Business and Labor Committee Regarding Senate Bill 103

Jodi M. Smoller
March 2, 1999

I. Introduction

Thank you for allowing Allstate Insurance Company to comment on SB 103. Allstate is the nation's second largest personal lines insurance company insuring more than 69,000 automobiles and more than 20,000 homes in Montana. Allstate is the third largest automobile insurer and the fourth largest property insurer in Montana.

We are opposed to SB 103 because it will hinder the vast majority of insurance service transactions that Allstate provides to its customers, create unnecessary delay, potentially place customers and their property at risk, and lead to higher insurance rates for Montana customers. Our customers, your constituents, want their claims and other insurance transactions handled quickly and efficiently. They want to be made whole without unnecessary delay and inconvenience. SB 103 would take away Allstate's ability to expediently respond to its customers' needs during insurance transactions. Not only will this create dissatisfaction and frustration for our customers, but it will not provide any additional privacy protection that does not already exist in the current Insurance Information and Privacy Protection Act. Allstate recognizes the need to protect the privacy of consumer information. The current Insurance Information and Privacy Protection Act accomplishes that need. Given that SB 103 will result in customer frustration, dissatisfaction, and higher insurance rates, this is not a pro-consumer bill.

II. Allstate's Claim Handling Process

Allstate handles approximately 7,000 automobile claims and 1,500 property claims in Montana annually. The vast majority of automobile claims are settled within 6 days from the date that we receive the claim and the vast majority of property claims are settled within 10 to 16 days from the date that we receive the claim. Immediately after an accident, time is of the essence to minimize costs, inconvenience and additional damage. However, SB 103 creates numerous barriers to such swift action which could potentially endanger our customers and place their property at risk.

III. Likely Consequence of SB103

SB 103 requires that an insurer obtain a signed disclosure of authorization form from its customers before it collects any personal or privileged information about an applicant or

customer during an insurance transaction, which includes the application and claims process. Personal or privileged information includes, among other information, a customer's name, address, motor vehicle record, civil or criminal record, or any other information that would be used in connection with a claim.

During the insurance application process, applicants want to be treated fairly and expeditiously. They do not want the additional burden and inconvenience of increased paperwork. SB 103 would create an additional step in the already burdensome application process for our applicants and increase the retention costs associated with storing these forms, which cost will ultimately result in higher premiums for our Montana customers. Without providing additional privacy protections, SB 103 will simply create additional inconvenience and lead to increased premiums.

During the claims process, customers feel vulnerable and simply want to be returned to a pre-accident condition quickly and without additional aggravation. However, SB 103 will not only lead to customers dissatisfaction because of increased delay, but it has the potential of endangering our customers and placing their property at risk. SB 103 requires that each and every time a person has an automobile or property claim, he/she must sign a new disclosure of authorization form before Allstate can obtain and disclose any information about that person, including the individual's name, address, or whereabouts. This is not the type of unnecessary paper morass that our customers need or want.

The following sets forth a few examples of how SB 103 will lead to increased delay, expense, and risk to our customers:

(1) If an Allstate insured suffers a minor fire loss to his/her home and there is severe smoke damage to the home which makes it uninhabitable, currently, upon notice from the insured, Allstate is able to immediately arrange for temporary housing, arrange for any necessary food and clothing and dispatch third party vendors to the home to immediately begin repairs and cleanup. However, SB 103 would require Allstate to obtain a signed disclosure form before any of these arrangements or repairs could commence. Consequently, a frustrated customer would be required to make all of his/her own arrangements without Allstate's facilitation and to wait for repair and cleanup on the home until such time as he/she signs a form.

(2) If an Allstate insured suffers water damage in his/her home due to bursting pipes, with our customer's verbal permission, Allstate is currently able to immediately dispatch repair firms to the home to mitigate water damage, start water extraction, and protect other property from water damage or resulting mold or mildew. This practice minimizes inconvenience to the homeowner and reduces the ultimate cost of clean up and repairs. By using this process, repairs are started promptly, which could not occur with the need for written authorization.

(3) If there is a large wind or hail storm in Montana, Allstate utilizes independent adjusters to assist Allstate's adjusters in claims handling. These independent firms allow us to give customers fast, quality service during a time when an entire

community is suffering damage. SB 103 would require consumers to wait for their storm claims to be assigned until authorization forms are signed. This creates delay and adds to the frustration of storms.

(4) If an Allstate customer is involved in an automobile accident and the automobile is not drivable, currently, we are able to quickly arrange for car rentals for the customer, arrange for direct billing, and direct the rental car company to deliver the car to the customer. However, SB 103 would make this convenience impossible because the stranded motorist would not be able to immediately sign the authorization form. Delay in finding alternate transportation will certainly be frustrating to our consumer.

IV. Conclusion

SB 103 would be unfair to our policyholders and your constituents. Our customers pay a premium for insurance to ensure piece of mind should they suffer a claim. If they do actually have a claim, the customer expects to be treated fairly and expeditiously. They do not expect to have to jump through procedural hoops to have their family and property made whole. Without creating any additional privacy protections, SB 103 victimizes insureds during a time when they often feel vulnerable and simply want their lives returned to a pre-accident condition.

Furthermore, the additional costs created by the delay in claims handling will lead to increased premiums for our Montana insureds. Fairness demands that we try to prevent this from happening.

Thank you again for your willingness to consider Allstate Insurance Company's views on SB 103. We share a common goal of ensuring our customers' privacy. Allstate believes that this can be accomplished without encumbering insurance transactions with unnecessary forms and delay, which is why we hope that you will oppose SB103.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/2/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter			X
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown			X
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss			X
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3/2/99

BILL NO SB 103 SPONSOR(S)

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Mark O'Keefe	Hrs	State Auditor
(P) O I	Gerry Barkus	E Helena	AARP
(P) O I	Betty Bewerly	Helena	MSCA
(P) O I	Beth Lovitt	Helena	MMA
(P) O I	Jerner Bertelsen	Helena	MSCA
(P) O I	Dorothea Bertelsen	Helena	MSCA
(P) O I	Susana Witte	Helena	BlueCross BlueShield MT
P (O) I	Laura Kotelman	Desplaines, IL	NAII
(P) O I	Ayan STRANGE	Billings MT	MPCA
(P) O I	Jon Metropoulos	Helena, MT	Farmers Ins.
(P) O I	Rebecca Moog	Helena	MWL
(P) O I amend	Tom Ebzery		YCHP
(P) O I	Pat Driscoll	Big Timber	HIAA
P O I	Greg Sweet	Mt Pine	
(P)	Don Allen	Helena	MMBP

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

(S) W/A Dennis Hemmer PhRMA

(P) (O) Chris Jankowski ACLI, Washington D.C. ACLI

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3/2/99

BILL NO. SB 103 SPONSOR(S) Franklin

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Mona Jamison	Helena, MT	Shodair Hospital PT Association
(P) O I	Todd Hall	Helena MT	MWA
P O I	Gayle Higgins	Red Lodge	—
P O I	Elsie Martin	Red Lodge	—
(P) O I	Jim Ahrens	Helena	Montana Hosp. Assoc
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 10, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 217, SB 229, SB 245, SB 305, SB 466 (3/3/99), 4/2/1999
Executive Action: SB 245, SB 466, SB 103, SB 272, SB 113

EXECUTIVE ACTION ON SB 103

Motion: REP. KRENZLER moved that SB 103 BE CONCURRED IN.
{Tape : 3; Side : B; Approx. Time Counter : 380 - 390}

Motion/Vote: REP. KRENZLER moved that SB 103 BE AMENDED. Motion carried unanimously.
{Tape : 3; Side : B; Approx. Time Counter : 390 - 395}

Motion/Vote: REP. KRENZLER moved that SB 103 BE CONCURRED IN AS AMENDED. Motion carried unanimously.
{Tape : 3; Side : B; Approx. Time Counter : 395 - 470}

EXECUTIVE ACTION ON SB 272

Motion: REP. PAVLOVICH moved that SB 272 BE CONCURRED IN.
{Tape : 3; Side : B; Approx. Time Counter : 470 - 490}

Motion/Vote: REP. PAVLOVICH moved that SB 272 BE AMENDED. Motion carried unanimously.
{Tape : 3; Side : B; Approx. Time Counter : 490 - 495}

Motion: REP. PAVLOVICH moved that SB 272 BE CONCURRED IN AS AMENDED.
{Tape : 3; Side : B; Approx. Time Counter : 495 - 500}

Motion/Vote: REP. EWER moved that SB 272 BE AMENDED. Motion failed 1-17 with Ewer voting aye.
{Tape : 4; Side : A; Approx. Time Counter : 0 - 9}

Motion/Vote: REP. PAVLOVICH moved that SB 272 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with Brown voting no.
{Tape : 4; Side : A; Approx. Time Counter : 9 - 43}

EXECUTIVE ACTION ON SB 113

Motion: REP. SLITER moved that SB 113 BE CONCURRED IN AS AMENDED.
{Tape : 4; Side : A; Approx. Time Counter : 43 - 60}

Motion/Vote: REP. SLITER moved that SB 113 BE AMENDED. #2,5,6,7,8 and 9. Motion carried 13-4 with Ewer, Lawson, Pavlovich, and Squires voting no.
{Tape : 4; Side : A; Approx. Time Counter : 60 - 75}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/10/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	~~X~~	X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		